

# The Gazette of India

**EXTRAORDINARY**

**PART II—Section 3**

**PUBLISHED BY AUTHORITY**

---

**No. 203] NEW DELHI, MONDAY, AUGUST 3, 1953**

---

**ELECTION COMMISSION, INDIA**

**NOTIFICATIONS**

*New Delhi, the 21st July 1953*

**S.R.O. 1513.**—Whereas the election of Shri Gopal Singh, as a member of the Legislative Assembly of the State of Rajasthan, from the Asind constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jaisingh, s/o Shri Shabalsingh, Rajput, resident of Bhilwara, District Bhilwara;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL, KOTAH**

**CORAM:**

Shri P. D. Pande, *Chairman.*

Shri J. P. Mathur, *Member.*

Shri Bishan S. Darbari, *Member.*

**ELECTION PETITION NO. 91 OF 1952.**

Shri Jaisingh, son of Sabal Singh, Rajput, resident of Bhilwara, district Bhilwara—*Petitioner.*

*Versus*

1. Shri Gopal Singh, son of Govindsingh, resident of Badnor, district Bhilwara.
2. Shri Shankarlal, resident of Asecnd, district Bhilwara.
3. Shri Goverdhansingh, Vakil, resident of Aseend, district Bhilwara.
4. Shri Nandlal, resident Aseend, district Bhilwara.
5. Shri Ram Prasad Ladda, Vakil, resident of Bhilwara, district Bhilwara.
6. Shri Jammalal Ladda, Vakil, resident of Nimbahera, Tehsil Aseend, district Bhilwara, at present Gulabpura Hurda—*Respondents.*

*Counsel*

Shri Nathulal Jain for the Petitioner and Shri U. M. Trivedi and Pt. Ram Swarup for Respdt. No. 1. Shri B. P. Beri and Bhanwarlal Vyas also appeared for Respdt. No. 1.

## JUDGMENT

This is an election petition alleging disqualification, corrupt and illegal practices and return of false election expenses and asking that the election of Shri Gopal Singh (Respdt. No. 1) to the Rajasthan State Legislative Assembly from Asecnd Constituency be declared to be wholly void and re-election be ordered.

It appears that all the parties were candidates to the general election of 1952. Respondents 3 to 6 ultimately withdrew but the rest contested and Respondent Gopal Singh who was an Independent candidate was eventually declared elected.

The Petitioner who was a Congress candidate has filed the present petition to void the election on the following three grounds:—

His first plea is that the nomination paper of Respdt. Shri Gopal Singh was improperly accepted, because, being a Jagirdar of Thikana Badnor, he holds an office of profit under the Rajasthan Government, and is, therefore, disqualified to become a member of the Rajasthan State Legislative Assembly.

Secondly, he alleges that Respdt. Shri Gopal Singh had made himself guilty of the following corrupt and illegal practices as detailed in Schedule 'A' of the petition, namely,—

- (1) he provided food and drinks to about 150 voters at his Garh (residence) on or about the 1st or 2nd of January, 1952 and before the polling had started,
- (2) through his agents Goverdhansingh and Girdhar Lal, he paid Rs. 100 to one Ekling Jat of Palri as illegal gratification to procure the votes of his family and fellow villagers,
- (3) he also paid Rs. 20 to Lachman Chotia resident of Sareri as illegal gratification to procure his vote and the votes of his family,
- (4) through his election agent Girdhari and polling agent Goverdhan Singh, he induced the residents of Daulatgarh, Jagpura, Sareri and Jaitpura to vote for himself by holding out promises of payment of large sums of money to them,
- (5) on the date of the polling, he actually paid Rs. 200 to the Panchas of Jaitpura, who however, returned the amount,
- (6) through his canvassers and agents, he threatened the voters by show of arms generally and by threats of dacoities also in case they did not vote for him,
- (7) he procured vehicles for bringing the voters to the polling stations and the residents of Jhalra were brought to Jali Polling station in a Bus,
- (8) his polling agent maltreated the Presiding Officer at Gainyla-ka-Khera polling station.
- (9) he and his agents and canvassers were caught canvassing within an area of 100 yards of the polling station at Daulatgarh, Raghunathpura, Lachhura and Sangramgarh,
- (10) he and his agents and canvassers secured votes by personation in Badnor, Gainyla-ka-khera, "etc" polling stations.

Thirdly, the petitioner suggests that Respdt. Gopal Singh has filed a false return of expenses, in as much as, he has not shown the expenditure incurred under items (1) to (5) mentioned above.

Respondents 2 to 6 did not appear but Shri Gopal Singh (Respdt. No. 1) resisted the claim on various grounds. He said that he enjoys the privileges of a Jagirdar by virtue of the ownership of the Jagir and on account of his proprietary rights over the land and not as an agent of or for the benefit of the Government. He denied that he holds any office of profit as a Jagirdar and pleaded that he is in no manner disqualified to be a member, and so, his nomination paper was properly accepted. According to him, the particulars of the corrupt and illegal practices as given in Schedule 'A' of the petition are wholly false and malicious. He further contended that the petition is liable to be summarily rejected under Section 85 of the R. P. Act of 1951, because, the Petitioner's statement that he had made security deposit (in regard to costs) is not accompanied by the necessary receipt as required by Section 117 of the Act. He also submitted that the petition is liable to be dismissed, because, the Petitioner having failed to lodge the return of his election expenses in time, has incurred disqualification under Clause (cc) of Section 7 and Section 143 of the

Representation of People Act of 1951. In the end, he asserted that the petition is not *bona fide* and is champertous.

On the above pleadings the following issues were framed on 9th December 1953:—

1. Does Respondent No. 1 hold any office of profit as Jagirdar in Rajasthan State and is the acceptance of his Nomination paper by the Returning Officer improper?
2. (a) Did Respondent No. 1 resort to illegal and corrupt practices and undue-influence as alleged by the petitioner in Schedule "A" paras. 1 to 9?
- (b) Were the aforesaid corrupt and illegal practices and undue influence sufficient to materially affect the election?
3. Did Respondent No. 1 file false return of election expenses as stated in para. 10 of Schedule "A" of the petition and if so with what effect?
4. Is the petition liable to be dismissed because the petitioner failed to file the Treasury receipt in respect of the security deposit along with his petition?
5. Whether the petitioner has incurred any disqualification by his alleged failure to lodge return of his election expenses? If so, what is the effect of that disqualification on his election petition?
6. Is the petition not *bona fide* and is champertous?
7. To what relief, if any, is the petitioner entitled.

But, on the 5th of January 1953, when the case was taken up for Petitioner's evidence the petitioner himself filed the application at p. 96 stating that this Tribunal was not properly constituted. This objection was heard and disposed of against the Petitioner on 22nd January 1953 (*vide* our order at pp. 112 to 115).

Now, the contesting parties having adduced their evidence and arguments on the issues as originally framed, we proceed to consider the issues in their sequence.

#### FINDINGS

*Issue 1.*—The Petitioner's case is that on the date on which Respondent. Gopal Singhji filed his nomination paper, he was the Jagirdar of Thikana Badnor, because, as a Jagirdar he had to render certain services and after deducting Chathund and Chakri i.e. one sixth of the total income of the Thikana, in lieu of his personal services and military aid, he used to get 50 per cent. of the Revenue of the Thikana. In case of default of personal services or military assistance, it was open to the Rajya to forfeit or resume the Jagir. At the time of his nomination the Respd. did use to collect the land and pay it to the Rajya i.e., to the Rajasthan Government. He used to give out pattas and realize irrigation cess also. In support of his statement, the petitioner has drawn our attention to Exs. XIV and XV.

Respd. Gopal Singhji was examined as R.W. 11. He admits that he is a Jagirdar but denies that he renders any service to the State of Rajasthan or that any service is binding upon him as a Jagirdar. This denial is belied by his admission that even now he has been paying Chathund and Chakri to the Rajasthan Government in keeping with Ex. XX which is a true copy of his application to the Maharana of Udaipur, asking for commutation of his services into cash. Paras. 5 and 6 of this letter are relevant and show that as Jagirdar he had positively agreed to pay certain amount of money in lieu of the services which he was expected to render.

All the above facts lead us to the conclusion that both on the date of his nomination, i.e. on 23rd November 1951, when the nomination paper was filed, as also now, Respd. Gopal Singhji holds, in his capacity as Jagirdar, the position of a servant of the Rajasthan Government.

But, although, every Jagirdar is an assignee of land revenue on condition of future service that does not necessarily mean that he holds an 'office' for an office is a position or place to which certain duties are attached more or less of a public character and the petitioner has not been able to establish that on the date of his nomination Respd. Gopal Singhji was, as a Jagirdar, discharging any duties of a public character. In fact, it appears that even the Revenue and Judicial powers which the Respd. was exercising as Jagirdar were taken away from him in 1948 (*vide* R.W. 11). Therefore, if on the date of nomination the respondent was deriving some profits as assignee of land revenue, it cannot be

said that he was holding any 'office of profit' as contemplated by Article 191 of the Indian Constitution.

It has further to be remembered that the status of Respdt. Gopal Singh as Jagirdar on 23rd November 1951 (date of nomination) has not to be confused with the status of a Jagirdar during the Mughal period when the Jagirdar was a functionary or a bureaucrat exercising certain delegated administrative powers and enjoying some other immunities and privileges in order to make it possible for him to realize the revenue of the tract assigned to him with ease. It appears that the Jagir system as it evolved in Rajasthan had developed characteristics of its own which distinguished it from the institution of Jagirdars under the Muslim Rule, for, although, the rights of the Jagirdars in the States of Rajasthan has not been given any statutory recognition, yet, as against the conditions prevailing under the Muslim Rule, there was no aristocracy of office and the Jagirdari had become heritable and more or less unresumable. The best description of the Jagir System amongst the Rajputs is contained in the words of Tod: "The grant of an estate is to the life of the holder, with inheritance to his offspring in lineal descent or adoption with the sanction of the Prince and removable for crime or incapacity; this reversion and power to resume being marked by the usual ceremonies on each lapse of the grantee, or sequestration (Zabti), or homage (Nazarana) at the investiture of the heir".

The same author has also made it clear at page 130 Vol. I (New Edition) that "there are two classes of Rajpoot landholders in Mewar... One is the Grasya thacoor, or lord; the other the Bhoomia. The Grasya chieftain is he who holds (grass) by grant (putta) of the prince, for which he performs service with specified quotas at home and abroad, renewable at lapse, when all the ceremonies of resumption (Zubti), the fine of relief (Nuzzerana), and the investiture take place".

Respdt. Shri Gopal Singh is a Jagirdar of Thikana Badnor in Mewar. He is evidently a 'Grasya Thacoor'. We have, therefore, to determine his personal status as Jagirdar with reference to what has been stated by Tod, as also, on the basis of the other material which has been available. In the book entitled as "Mewar Under Maharana Bhupal Singhji, G.C.S.I." we find it mentioned at page 26 that there are three classes of Jagirdars in Mewar viz., (1) the Umraos, (2) the Battis, and (3) the Gols. The Respondent being a Rathor of Badnor should fall under class (1), vide the list of Umraos given at the bottom of the said page. Serial No. 14 of the Statement No. 1 at page 30 of the same book makes it clear that the Thikana of Badnor was able to obtain commutation of services into cash.

It cannot be denied that there are always two elements in the conglomeration of the rights of a Jagirdar. One of them is his tenure as a landholder and the other is comprised in the special powers or privileges exercised by him with official authority or by prescription. In the present case, we are not at all concerned with the question as to whether or not jagirdari rights are property rights but what we have to determine is as to whether the powers and privileges mentioned in para. 4 of the petition and also admitted by Respdt. Gopal Singhji that he enjoys them were exercised by him as a Jagirdar or as an office-holder or holder of an office of profit. In our opinion, these powers or privileges were concomitants of his status as Jagirdar rather than incidents of any office under the Government.

In order to enable us to determine the relationship of Respdt. Gopal Singhji as Jagirdar with His Highness the Maharana of Udaipur, the agreements (Kol-namas) of the years 1818 and 1854 are relevant. The latter, which amends the former, is reported in Aitchison's Treaties Vol. III p. 30. This last Kolnama as also Ex. XX are scrupulously silent on the fact that as Jagirdar Respdt. Gopal Singh or his ancestors were holding any office.

Again, in addition to the facts discussed above, the following characteristics of Jagirdari, belie the theory that Jagirdari is an office of profit:—

- (1) An office is ordinarily terminable at the will of the State but Jagirdari is not.
- (2) Although hereditary offices may be recognized by statutes like the Madras Acts of 1895, an office is not ordinarily heritable and the right to inherit Jagirdari is unquestionable unless the heir may be excluded by reason of certain disqualifications e.g. unsoundness of mind or some grave political offence.
- (3) A Jagirdar does not get any specific salary or remuneration from the coffers of the State.
- (4) A Jagirdari can be inherited by an heir who is not even *sui juris*.

- (5) At the time of the merger, the Jagirdars were not treated as Government servants, nor, are they governed by the State Servants Conduct Rules.

In view of all the facts and reasons given above, we find it impossible to hold that Respdt. Shri Gopal Singh held any office of profit on the date of his nomination i.e. on 23rd November 1951. And, for the future, with the total abolition of Jagirdari which is in the offing, the so called office, if any, of Respdt. Gopal Singh as Jagirdar will be wiped off, and so, there will be no fear of that office being incompatible with the independence of the holder thereof, in context with the Government in power. It may be added that under the Ordinances Nos. 10 and 15 of 1949, the former State of Rajasthan has taken over even the right to collect revenue from the Jagirdars, and so, even the last vestiges of the false official prestige of a Jagirdar in Rajasthan, have now disappeared.

*Issue 2(a).*—The alleged corrupt and illegal practices which have been enumerated by the Petitioner in Schedule A have, for the sake of greater clarity, been amplified by us into 10 different charges which have been detailed in the introduction to this judgment while describing the Petitioner's second ground of attack against the validity of the election. We shall, therefore, proceed to discuss those charges *seriatim* without trying to reproduce them at any length.

*Charge (1).*—It is alleged in para. 1 of Schedule A of the Petition that Respdt. Gopal Singh had provided food and drinks to about 150 voters at his Garh on or about the 1st or 2nd of January, 1952. But, in his statement on oath, the Petitioner has stated that the date of the incident as given in the petition has gone wrong through an oversight and that the incident at Garh actually took place about 15 or 20 days before the election. Much has been made of this discrepancy by the Respdt. but since the amended date of the feasting is supported by the written document Ex. XIX, we do not think the discrepancy is material. The Petitioner is supported in this statement by his witnesses Hazari Chota (P.W. 2), Juhara (P.W. 3) and Shri Girdhari Singh, Niab Tehsildar (P.W. 6) and Hazari (P.W. 4), the first two of whom have further deposed that on the date of the incident, people of about 10 or 20 villages numbering about 500 had first been collected by Respdt. Gopal Singh at Ghanghor Ghat and when they did not agree to vote for him, he took about 150 voters to Garh, entertained them with food and drink and then asked them to give their signatures to the effect that they would vote for him. The Niab Tehsildar (P.W. 6) has also stated that on the basis of a verbal report of the incident as made to him by the Petitioner, he had prepared a memo of the statements of five persons out of whom he remembers the names of the three Hazaris and Pratap. The actual memo has not been available to us but the present Tehsildar of Badnor's report Ex. XIX confirms the story of the alleged entertainment at Garh. We, therefore, hold that the entertainment did take place. We may here note that in order to nullify the effect of Ex. XIX, Respdt. Gopal Singh has examined a witness named Nathu Singh (R.W. 2). In our opinion, the latter has simply played the bat, and so, we regard him as unreliable. Witnesses Bhura (R.W. 5) Girdharilaji (R.W. 7) and Ugar Singh (R.W. 8) have in addition to Respdt. Gopal Singhji (R.W. 9) himself denied that there was any treating at Garh. The denial as made by the first witness is nothing short of a negative evidence. Girdharilaji and Ugar Singh have good reasons to be partial to the Respdt., because, the former was a paid election-agent and has been contradicted by Ugar Singh in material particulars as regards the Congress meeting at Badnor, the object of Ugar Singh's visit to that meeting and the alleged subsequent talk about its proceedings. The latter witness is an A.D.C. to the Respdt. 1 and gets a very small salary of Rs. 40 p.m. He was also seen acting as Respondents' pairkar throughout the Cross-examination of Petitioner's witnesses. Respdt. Gopal Singh is himself a contesting party, and so, not much weight can be given to his denial as against the Petitioner's witnesses Hazari Chota (P.W. 2), Juhara (P.W. 3) and Hazari (P.W. 4), against whom no animosity has been proved and who are certainly much more independent than the aforesaid witnesses produced on behalf of the Respdt. No. 1.

The question is: whether the above entertainment amounted to a corrupt practice?

It has to be remembered that Respdt. Gopal Singh is a Jagirdar of Thikana Badnor and Garh admittedly refers to his residential house at that place. He first convened a meeting of the villagers of about 10 or 20 villages at Ghanghor Ghat and then took about 150 dissenting voters to Garh and there entertained them with *roti*, *Chana-ki-dal* and wine and then asked them to give their promises of vote under their signatures.

Thus, the treating which took place at Garh was certainly not a form of treating between social equals, nor, did it evidence any hospitality which may be attributed to Respdt. Gopal Singh's generosity or his profession or his desire to express his good-will to those who honestly helped his cause, but, the guise of hospitality was made use of with a view to gain rather cheap popularity and thereby affect or influence the votes of the persons entertained. It was the treating of the ordinary poor villagers by a big Jagirdar of about 125 villages,—of the inferiors by the superior. It was designed to give the treater influence over the persons treated and secure to the former not only the good-will, but also, signatures of assent of the latter with reference to the impending election. It consisted of an excessive and indiscriminate entertainment of about 150 and was an attempt to get at the voters through their mouths and through their stomachs. It took place only about 15 or 20 days before the election with the corrupt or nefarious intention of influencing the election. Therefore, it clearly comes within the scope of Section 123(1)(b) of the R. P. Act as a species of bribery or gratification.

*Charge (2).—*The only witness who has been produced in support of this charge is Ekling Jat (P.W. 5), who is a resident of Palari and states that Respdt. Gopal Singh had convened a meeting of about 400 people at Palari, and there, Vakil Goverdhan Singh had taken one Gokul and him (Ekling Jat) aside and asked him about their wishes. The witness told him that the villagers wanted Rs. 200 to 400 for a well. The Vakil then took him to the Respdt. who assured him that in case the villagers cast their votes in the Ballot-box bearing the symbol of "bow and arrow" (which was Respdt's symbol) he would arrange to get the well sunk. The Respdt. said further that since he had no money with him at the spot, somebody may be sent to him to Ascend to receive the money. The witness then went to Ascend four days later and there in presence of Respdt. Gopal Singh, Goverdhan Singh, Vakil, paid him Rs. 100 and the Respdt. assured him that the Vakil would pay Rs. 300 more after the votes had been cast. The Respdt. has produced Shri Goverdhan Singh Vakil (R.W. 1), and Gokul (R.W. 3) to contradict Ekling Jat. But apart from the contradiction of it, the above 'cock-and-bull' story of Ekling Jat is hard to believe, coming as it does from the mouth of one solitary witness, out of the 400 persons present, who were apparently concerned in the transaction and must, therefore, have known about it. We accordingly regard the charge as not proved.

*Charges (3) to (5), (7) and (9).—*The Petitioner has no reliable evidence in support of these charges which must accordingly fall to the ground.

*Charge (6).—*The two witnesses who have been examined to substantiate this charge are Nandkishore (P.W. 7) and Radha Krishan (P.W. 9). Both of them belong to village Motras and their evidence is that about 10 to 15 days before the voting, Respdt. Gopal Singh went to their village with Rao Kalyan Singh. He was also accompanied by 3 or 4 companies, who carried guns, and 4 or 5 others, who wielded lathis. A meeting was held, and at that meeting, according to P.W. 7, Respdt. Gopal Singhji said that until then there had been no dacoities in the village but there would be dacoities in the future, if the people did not vote for him. But the next witness P.W. 9 has both transformed the alleged talk and its sequence. He says that on the audience being advised by him to cast their votes in the Dhanush-wali-peti, they asked for protection from the dacoities such as were occurring in the neighbouring villages and then Respdt. Gopal Singhji replied that if people voted in the manner advised, there would be no dacoities in the future. The evidence of the first witness involves a threat, while, that of the second implies an assurance. The statements being so conflicting cannot be relied upon. We may, however, note that we do not place much faith on the statements of Shri Kalyan Singh (R.W. 4) and Ram Lal (R.W. 6) either. The former of whom has been called to deny both his visit to Motras and occurrence of dacoities in his own 'Ilaka'. The latter deposes that Respdt. Gopal Singhji had gone to Motras only to preach the pious sermon that the voters should vote according to their 'dictates divine'. The last witness has further denied that Respdt. Gopal Singhji and his companions carried any guns or lathis. This denial does not convince us much, because, a gun or two are mostly the ordinary paraphernalia of a moving big Jagirdar, and so, if in view of the election contest any guns or lathis were carried, we should not feel surprised. But, even then, we do not find the charge established.

*Charge 8.—*This charge stands proved by the statements on oath of the Petitioner and his witness Shri Jogendra Nath (P.W. 8), who is at present the Tehsildar at Aseend and acted as the Presiding Officer at Gainyla-ka-Khera polling station. It appears that one Ram Gopal Singhji was the election agent of Respdt. Gopal Singhji. He misbehaved and was convicted and sentenced under Section 130 of the R. P. Act (*vide*, the charge sheet Ex. I and judgment Ex. II).

**Charge 10.**—This charge has been proved only in regard to Badnor and Gainyla-ka-Khera.

As regards the personation at Badnor, the petitioner deposes that one Goma Khatik, who was carrying an identity-slip containing Respdt. Gopal Singhji's symbol, attempted to cast one vote for himself and another for his sister-in-law. The petitioner got him arrested and prosecuted along with his sister-in-law Mst. Dhamu under Sections 136 and 135 of the R. P. Act. Ex. X is the relevant charge-sheet and Ex. XI is the judgment.

Out of three persons who are alleged to have been guilty of personation at Gainyla-ka-Khera the petitioner has been able to name the following two:—

- (1) Ladu Singh, who had already cast his vote and had according to Shri Jogendra Singh P.W. 8 attempted to vote once again as Kesar Singh (*vide*, charge sheet Ex. XII and judgment Ex. XIII), and,
- (2) Mst. Jamni, who had come to personate her co-wife Mst. Jummi (*vide*, the charge-sheet Ex. VI and judgment Ex. VII). The Respdt. has examined Mst. Jamni as R.W. 10 but has miserably failed to destroy the effect of Exs. VI and VII.

The Petitioner swears that Respdt. Gopal Singhji's agent, Ram Gopal, was present when the above two incidents took place and also that both Ladu Singh and Mst. Jamni were found in possession of identity-slips which bore the Respdt's symbol of bow and arrow. The Presiding Officer concerned *viz.*, Shri Jogendra Singh (P.W. 8) has further deposed that Ram Gopal aforesaid attempted to prompt Ladu Singh and Mst. Jamni, so that, they may give out the names under which they had come up to vote and not their own personal names.

Thus, there is no doubt left in our minds that, although, Respdt., Gopal Singhji had expressed his regrets to the Presiding Officer about Ram Gopal's misconduct, two major corrupt practices of personation had been committed under Section 123(8) of the R. P. Act at Gainyla-Ka-Khera, if not at Badnor as well *vide*, Exs. X and XI.

**Issue 2(b).**—This portion of the issue was framed at the instance of Respdt. No. 1's learned counsel.

Under issue 2(a), we have held that charges Nos. (1), (8) and (10) have been proved, but, in regard to the last two charges, we desire it to be noted that, although, the alleged corrupt practices were committed there is nothing much to connect them with Respdt. 1. There is no evidence that the latter had anything to do with the offences. His polling agent Ram Gopal was, of course, responsible, for charge No. (10) but, since the last two corrupt practices had not been practised with the sanction or connivance of the Respdt., we are not prepared to hold that the election has been materially affected by the aforesaid corrupt practices.

But, in view of the specific provisions of Sections 100(2)(b) and 140 of the R. P. Act 1951, when read with our findings on charge (1) as discussed under issue 2(a), we have no manner of doubt that that charge alone is sufficient to avoid the election. Therefore, the suggestion as made by Shri Girdhari Lal (R.W. 7), and confirmed by the copy of the Election Result Ex. A1, that Respdt. Gopal Singh had defeated the Petitioner by 1641 votes is a matter of no importance to us, in so far as, the commission of one single major corrupt practice mentioned in Section 123 of the R. P. Act, should be fatal to the election and should also operate as a disqualification for membership. We accordingly hold that the commission of the corrupt practice, which we have found proved under the aforesaid charge No. (1), is sufficient to materially affect the election and disqualify Respdt. Shri Gopal Singh.

**Issue 3.**—A copy of the return of the election expenses is on the file but since the Petitioner has failed to prove the copy, it is not possible to look into it for anything. The issue has accordingly remained unproved and is decided against the petitioner.

**Issue 4.**—The election petition is dated the 4th of April 1952. The endorsement of the Assistant Secretary of the Election Commission of India as made on top of the petition is that the petition was presented on 5th April 1952. Para. 9 of the petition refers to the security deposit and the duplicate Receipt Ex. XVI indicates that the security deposit of Rs. 1,000 had been actually made by the Petitioner on 4th April 1952, with the Bank of Jaipur. The deposit with the Jaipur Bank has not been objected to by the Election Commission under Section 85 of the

R. P. Act, nor, are we prepared to take any exception to it under Section 90(4) of the Act. We, accordingly decide that the petition is not liable to be dismissed.

*Issue 5.*—The Respdt. No. 1 has failed to establish that there was any default on the part of the petitioner to file the return of his election expenses. In fact, the Petitioner has admitted on oath that the Respdt. was never disqualified or not filing the return. The first portion of this issue is decided in the negative, and so, the second portion of it does not arise.

*Issue 6.*—There is no evidence on the record to suggest that the petition is either *mala fide* or champertous. The issue is accordingly decided against Respdt. No. 1.

*Issue 7.*—We hold that the Petitioner is entitled to have the election of Respdt. No. 1 declared to be void under Section 100(2)(b) of the R. P. Act of 1951. On account of the fact that charge (1) under issue 2(a) has been found fully proved against the Respondent.

#### ORDERED

Since we find it established that about 15 or 20 days before the election, Rcsplt. Shri Gopal Singh was personally responsible for entertaining about 150 voters with food and drink at his Badnor residence called Garh in order to capture their votes corruptly, his election in question to the Rajasthan Legislative Assembly from Aseend Constituency shall be declared to be void and he shall further stand disqualified under Section 140 of the R. P. Act of 1951. As regard the costs, it may be noted that if there were many unfounded allegations on the part of the petitioner, there were also a large number of unfounded objections on the other side. In other words, the defence was as oppressive as the petition. In these circumstances, we order that the successful petitioner should get full costs of his petition and we assess those costs at Rs. 500.

(Sd.) P. D. Pande.

(Sd.) J. P. Mathur.

(Sd.) Bishan S. Darbari.

KOTAH;

The 15th July 1953.

[No. 19/19/52-Elec.III/12105.]

**S.R.O. 1514.**—Whereas the election of Shri Harchand Singh and Shri Bishan Nath, as members of the Legislative Assembly of the State of PEPSU from the Banur constituency of that Assembly (now dissolved), has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Joginder Singh, son of Shri Kundan Singh, resident of Mohalla Sukhdasspura, Patiala.

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, KAPURTHALA AT PATIALA.

V. B. Sarwate,—*Chairman.*

S. B. Kartar Singh,—*Member.*

Jia Ram Saxena,—*Member*

#### ELECTION PETITION No. 103 OF 1952.

Joginder Singh s/o Kundan Singh, caste Ramdasia, resident of Mohalla Sukhdasspura, Patiala.—*Petitioner.*

1. S. Harchand Singh, B-I, Bungalow, Baradari Gardens, Patiala;
2. Bishan Nath, Advocate, Banla Street, Rajpura;
3. Ajaib Singh, Professor, Municipal Commissioner, Patiala;
4. Amar Nath V. & P. O. Pinjaur, district Kandaghat;
5. Babu Ram V. & P. O. Dera Bassi;



6. Chhajju Ram, V. Rajipur, P. O. Pinjaur, Tehsil & distt. Kandaghat;
7. Dhian Singh, V. Buprawar, P. O. Shambhu, distt. Patiala;
8. Ganga Singh, Retd. Manager Military Farm, The Liberty, Kasauli;
9. Jasmer Singh, village Jeoli, P. O. Lalru, Teh. Rajpura;
10. Lachhman Singh, village Karanpur, P. O. Pinjaur, Teh. and distt. Kandaghat;
11. Ram Sarup, Advocate, Patiala;
12. Sarwan Singh, V. & P. O. Garangan, Teh. Bassi, distt. Fatehgarh Sahib;
13. Surraukh Singh, village Chaund Heri, P. O. Lalru, Teh. Rajpura;
14. Vidya Rattan, V. Ramgarh (Bhudda), P. O. Dera Bassi.—*Respondents.*

ORDER DELIVERED ON 13-7-1953.

This Election Petition has arisen out of last general election from double member Banur Constituency of the PEPSU Legislative Assembly, for the reserved seat for the members of the scheduled castes, S. Harchand Singh Respondent No. 1 was declared elected. Respondent No. 2 was returned for the general seat of this constituency. Joginder Singh Petitioner filed his nomination paper from this constituency for the reserved seat describing himself as a Ramdasia which is a scheduled caste according to Constitution (Scheduled Castes) Order 1950 relating to the Patiala & East Punjab States Union. His nomination paper was, however, rejected by the Returning Officer on the ground that he had not given any proof of his belonging to a scheduled caste. The petitioner, accordingly, has challenged the election on the ground of improper rejection of his nomination paper as it has been materially affected thereby. He seeks a declaration that this election is wholly void.

2. Pleading of the parties gave rise to the following preliminary issues in the case:—

1. Is the petition, not verified according to law, if so what is its effect?
2. Were Walaiti Ram, Ranjit Singh, Jaswant Singh and Sher Singh duly nominated candidates for the election of Banur Constituency and what is the effect of their not having been made parties to the petition?

The Tribunal constituted of S. Mehar Singh as Chairman, and S. B. Kartar Singh and Shri Jia Ram Saxena as Members, found that the verification was proper. On the other point the tribunal by a majority (S. Mehar Singh dissenting) held that though the three out of the four persons named being duly nominated, should have been joined in the petition, their non-joinder did not merit dismissal of the petition. These findings were given by an order dated the 28th Jan. 1953, reproduced as Annexure 'A' to this order.

3. The only issue which now survives for determination is:—

Whether the nomination paper of the petitioner S. Joginder Singh was improperly rejected; if so, whether the result of the election has been materially affected thereby?

4. It is not denied that the petitioner Joginder Singh is a Sikh. His nomination paper was rejected by the Returning Officer on the ground that he was not a Ramdasia and was not eligible to contest for the reserved seat as he desired. Before the Returning Officer an affidavit of one Kanshi Ram was produced by the objector to the petitioner's nomination. This is marked Ex. D-1. In this document the deponent has only stated that he is Aggarwal Bania and that his full brother Kundan Singh is also an Aggarwal who lives in Mohalla Sukhsaspura, Patiala and that he has a son named Joginder Singh. This Kanshi Ram was not produced before the Returning Officer nor has he been produced before this Tribunal. Nobody is shown to have identified him when he appeared before a magistrate to have his statement attested. The affidavit could not, therefore, be looked upon as a piece of admissible or credible evidence. The Returning Officer

properly ordered that the affidavit placed before him should be proved according to law which was never done. No serious effort was made to produce that Kanshi Ram as a witness before us and the presumption must be that he would not have supported that statement before this Tribunal. This Kanshi Ram describing himself as brother of petitioner's father was an important witness and his non-production makes us doubt the correctness of the respondents' assertion (evidently inspired by that man's affidavit) about Kundan Singh father of the petitioner being an Aggarwal by caste.

5. The petitioner's father though living when the question of his caste was being debated before the Returning Officer, had been insane. He has since died. The petitioner could not, therefore, produce him as witness to disprove the affidavit of Kanshi Ram or to state affirmatively how the petitioner as his son could properly describe himself as Ramdasia. This was not, however, the first time that the petitioner claimed to be a Ramdasia. We have an order of the Chief Electoral Officer, Patiala, dated the 9th March 1951 in which Joginder Singh's claim to be Ramdasia was accepted in spite of his opponents' objections and as Ramdasia he was allowed to contest the Municipal Election in Patiala.

6. Shri Mihaan Singh P. W. 1 himself a Ramdasia and a former Labour Minister in PEPSU is also the President of the Scheduled Caste Federation of this State. His evidence shows that Joginder Singh has been the General Secretary of the Federation since 1951 and that being of the scheduled caste Ramdasia, he was put up by the Federation to contest this general election as a nominee of that body. If there were any doubt about his being a member of one of the scheduled castes specified in relation to this State by the Constitution (Scheduled Castes) Order, 1950, the Federation would not have taken the risk of making the petitioner the sole nominee of their party in Banur Constituency. This in our view is a weighty circumstance showing that all concerned have accepted Joginder Singh as belonging to the Scheduled Caste of Ramdasia.

7. The petitioner has produced a copy of birth register entry Ex. P-19 which mentions that a son was born to Kundan a Ramdasia living in Ramdasia quarter on 30th Asoj 1971. The petitioner according to his present age must have been born about this date. He explains that this Kundan Singh is no other than his father and the entry relate to his birth as he and his father have been living in Sukhdaspur which is the Harijan Colony of Patiala and otherwise known as Mohalla Ramdasia. In a futile attempt to rebut this the respondent produced another birth register entry showing the birth of a son to one Kundan of Patiala Kham on 5th Phagan 1974. Kundan in this entry of 5th Phagan 1974 is further described to be a Lohar and a Hindu, which could not be the description of the petitioner's father in view of the position accepted even by the respondent that the petitioners' father, even if he had been originally a Hindu, had been converted to Sikhism, and was therefore described as Bona Sikh or Weaver. He could not have been described as a Lohar nor was he residing in Patiala Kham. That entry cannot be relating to petitioners' birth. We feel satisfied and find that the birth register entry Ex. P. 19 relates to the petitioner and is good evidence of his being a Ramdasia since his father is described there in as a Ramdasia.

8. As we have seen, the petitioner has always been declaring himself as a Ramdasia even before filing his nomination papers and he has been regarded by the Ramdasia Community also as a member of the caste. We have it in evidence that people of this caste never marry outside their caste or would give their daughters in marriage to men of other castes. The petitioner has taken two wives both coming from Ramdasia families and his sister has gone to a Ramdasia family in marriage. These facts are confirmed by the evidence of even the respondents witnesses. It is also significant that respondents' own witness Chet Singh R.W. 9 has described the petitioner as a Ramdasia Sikh.

9. We no doubt find in the evidence of Gopal Singh P.W. 13 that the petitioners' father Kundan Singh had taken a Chamar woman in his house as wife and that for this reason, he was baptised as a Sikh and then the witness and the members of his caste began to mix with Kundan Singh. The witness, however, admitted that he had only heard it from other people that Kundan Singh though a Bania had kept a Chamar woman and was originally mixing with Mona Chamars i.e. Chamars who are Hindus by religion. This witness can rightly be characterised as belonging to a class of persons who though appearing for one party, try to harm the party calling him in cross examination because of their leanings for the opposite party. This is precisely how this Gopal Singh has behaved in the witness box.

We cannot place any reliance on his testimony and leave his evidence out of consideration. If it were a fact that Kundan Singh's father of the petitioner being a bania by caste had abducted a chamar woman while residing at Nabha and the Maharaja of Nabha had turned him out of his State for such degrading conduct (this was tried to be suggested in cross examination of the petitioner as his own witness), then we should expect the respondents to be able to produce a copy of the externment order passed by the Maharaja, to convince us on this point which has not been done. We also note that Kanshi Ram the so-called uncle of the petitioner or the petitioner's deceased mother Mst. Sant Kaur's father, or any of her other close relations on father's side now living has not been produced before us to support this suggestion, though such persons would have been the best witnesses to give evidence of this matter. We are not satisfied about the story that Kundan Singh was originally a bania and became a chamar by marrying a chamar woman.

10. The petitioner was no doubt sometimes being described as a 'bona'. According to the Glossary of Tribes and Castes of the Punjab and North West Frontier Province (published under the authority of the Government of the Punjab) a 'bona' is 'a weaver of the Chamar Caste' (*vide* page 115 of Vol. II). It appears that Ramdasias are all of Chamar caste in origin but a section of them as were following the profession of weavers chose to style themselves as 'bonas' to distinguish themselves and to show their superiority over other sections of Ramdasias Chamars who continued their occupation of what was regarded as unclean and inferior type of work. This is to be inferred from the following note about 'amdasia' contained in the Glossary above referred to (Vol III., Page 307).

"A very considerable number of Chamars have embraced the Sikh religion and they are called Ramdasias after Guru Ramdass. Many perhaps most, of the Ramdasias Chamars have abandoned leather work for loom. They do not eat carrion and occupy a much higher position than the Hindu Chamars, though they are not admitted to religious equality by the other Sikhs".

Late Bhai Kahan Singh of Nabha in his Encyclopedia of Sikh Literature at page 3064 has mentioned that Ramdass was a Chela of Lakhmir, a Sadhu, who was a weaver by profession. Persons following him call themselves Ramdasias. It is pertinent to mention here that paragraphs 2 and 3 of the Constitution (Scheduled Castes) Order 1950 specify both Chamar and Ramdasias as Scheduled Castes in relation to the PEPSU State in Part XIII of the Schedule to the Order.

11. Thus it is clear to us that a Sikh describing himself as a bona, as the petitioner sometimes chose to do, is really a member of the Ramdasias Caste. The fact that the petitioner produced before the Returning Officer a copy of the registered sale deed Ex. P. 7, dated 24th March 1927 wherein his father as vendee of the immovable property conveyed thereby was mentioned as a bona, should not have influenced the Returning Officer into finding that the petitioner was not a Ramdasias and so to reject his nomination papers. Such description of himself or of his father did not really detract from the value of the declaration made by him in the nomination papers that he belonged to the Scheduled Caste of Ramdasias and from such implication arising from the fact that the petitioner was the sole nominee of the Scheduled Caste Federation for the reserved seat from that Constituency. We find that the nomination of Joginder Singh petitioner was improperly rejected.

12. Upon improper rejection of a nomination there arises a presumption that the result of the election has been materially affected thereby and such presumption has not been rebutted by any evidence in this case.

13. We accordingly declare that the election in January, 1952 from Banur Constituency to the PEPSU Legislative Assembly was wholly void. The election petition was occasioned because of the unwarranted rejection of the petitioners' nomination by the Returning Officer for which the contesting respondents 1 and 2 were to be responsible. The objection to the nomination of the petitioner appears to have been raised by the respondent No. 3 who was a nominee of the Akali Party but who lost in the election. The respondents 1 and 2 having secured their return in the election were justified in requiring the petitioner to satisfy the Tribunal about his claim before getting the declaration of the election being void. We cannot, therefore, require them to pay the petitioners' costs though the petition succeeds in spite of their opposition. We leave the parties to bear their own costs.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

The 13th July, 1953.

## ANNEXURE 'A'

## BEFORE THE ELECTION TRIBUNAL AT KAPURTHALA

ELECTION PETITION No. 103 of 1952.

Joginder Singh—*Petitioner.**Versus*S. Harchand Singh and 13 others—*Respondents.*

The present petition arises out of the last general elections for Banur Constituency in respect of a seat reserved for the members of the Scheduled Castes in the Pepsu Legislative Assembly. S. Harchand Singh respondent No. 1 was declared elected for this seat and respondent No. 2 was returned for the general seat of this constituency. Joginder Singh petitioner has claimed that the election of this constituency be declared to be wholly void. He has impleaded 14 persons as respondents who were duly nominated candidates. The petition is resisted by respondent No. 1 alone and proceedings are *ex parte* against all others. Respondent No. 1 was allowed to amend his written statement. On the pleas of the parties two preliminary issues arise in this case:—

1. Is the petition not verified according to law, if so, what is its effect?
2. Were Walaiti Ram, Ranjit Singh, Jaswant Singh, and Sher Singh duly nominated candidates for the election of Banur Constituency and what is the effect of their not having been made parties to the petition?

*Issue No. 1.*—We have no hesitation in finding issue No. 1 in favour of the petitioner as the petition has been signed and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. The point raised by the contesting respondent was that the verification did not bear the date on what the petition was verified by the petitioner. On referring, however, to the original petition we find that it does bear the date of verification. The learned counsel for the respondent showed us a copy of the Government Gazette in which the petition was published. Somehow or other the space where date should have been noted is left blank in the petition as printed therein. Since the original petition on the file has the date of verification, the objection loses all its force, and the latter part of the issue does not, therefore, arise.

*Issue No. 2.*—S. Puran Singh D.W. 1 who acted as the Returning Officer for this Constituency at the elections has proved by his statement that S. Jaswant Singh, S. Ranjit Singh, and Shri Walaiti Ram were duly nominated candidates for Banur Constituency. S. Joginder Singh, the petitioner, did not adduce any evidence on this issue. Accordingly we hold that S. Jaswant Singh, S. Ranjit Singh, and Shri Walaiti Ram were duly nominated candidates and they have not been made parties to the present petition. There is no evidence before us to prove that S. Sher Singh was also a duly nominated candidate.

Lengthy arguments have been addressed to us by the learned counsel for the respondent No. 1 on the point that where in a case a petitioner does not join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated, such non-joinder is fatal to the petition and it should be dismissed forthwith. He has relied on the provisions of Sections 80, 82 and 98(a) of the Representation of the People Act, 1951. The counsel for the petitioner has argued that the provisions of section 80 have not been infringed, and the word 'shall' occurring in section 82 of the Act is not imperative in nature because no penalty is provided for contravening the provisions of this section although non-observance of the provisions of the foregoing section 81, and the succeeding section 83 attract dismissal of a petition under section 85 of the Act and that the provisions of clause (a) of section 98 cannot be invoked at this stage, when the trial has not been concluded.

In order to come to a decision on this point we have to minutely study the provisions of sections 80, 82, 83, 85, 90, 98 and 99 which are relevant and are reproduced below:—

"80. *Election petitions.*—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

82. *Parties to the petition.*—A petition shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated.

83. *Contents of petition.*—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

85. *Petition when to be dismissed.*—If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition:

Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefore, the Election Commission may in its discretion condone such failure.

90. *Procedure before the Tribunal.*—(1) The Tribunal shall, as soon as may be, cause a copy of the petition together with a copy of the list of particulars referred to in sub-section (2) of section 83 to be served on each respondent and to be published in the Official Gazette, and at any time within fourteen days after such publication, any other candidate shall subject to the provisions of section 119, be entitled to be joined as a respondent.

(2) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the Procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits:

Provided that it shall be sufficient for the Tribunal to make a memorandum of the substance of the evidence of any witness examined by the Tribunal and it shall not be necessary for the Tribunal to take down the evidence of any witness in writing at length unless the Tribunal is, on the application of any party or otherwise, satisfied that there is any special reason for so doing:

Provided further that the Tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(3) The provisions of the Indian Evidence Act 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

(4) Notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117.

98. *Decision of the Tribunal.*—At the conclusion of the trial of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or
- (d) declaring the election to be wholly void.

99. *Other orders to be made by the Tribunal.*—(1) At the time of making an order under section 98 the Tribunal shall also make an order—

(a) Where a charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording

- (i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any

candidate or his agent at the election, and the nature of that corrupt or illegal practice; and

- (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice, together with any such recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 141 to 143; and

(b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid;

Provided that no person shall be named in the order under sub-clause (ii) of clause (a) unless—

- (a) he has been given notice to appear before the Tribunal and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Tribunal and has given evidence against him, of calling, evidence in his defence and of being heard."

Section 80 requires that no election shall be challenged unless an election petition is presented in accordance with the provisions of Part VI of the Act comprising of sections 79 to 122. Chapter II of this Part relating to presentation of election petitions to Election Commission commences with section 80 and ends with section 85. From the perusal of the sections comprised in this Chapter it is clear that it deals with (1) calling in question an election by an election petition, (2) parties to a petition, (3) contents of a petition, (4) relief that may be claimed by a petitioner, and (5) petition when to be dismissed. It is not disputed that the presentation of this petition was made within time to the Election Commission, and that the petition was duly delivered to the Election Commission as required by clause (2) of section 81. The provisions of section 81 have, therefore, been complied with. There is no quarrel as to the contents of the petition and as to the relief claimed. The dispute relates as to the effect of non-joinder of three duly nominated candidates. It is clear from the definition of 'candidate' under section 79(b) that a duly nominated candidate comes within the ambit of the definition. This being so it is the statutory right of a duly nominated candidate to approach a Tribunal for being made a party to the petition within a certain time limit under section 90(1) of the Act. If the word 'shall' occurring in section 82 were to be interpreted as mandatory entailing summary dismissal of the petition there was obviously no necessity for making such a provision as is referred to above in section 90(1). Again if the word 'shall' in section 85 were to be taken as mandatory in effect there could arise no occasion for the Legislature to enact clause (4) of section 90, which means that where an Election does not think it proper to proceed to the dismissal of an election petition under section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of sections 81, 83 or section 117 of the Act. This by itself leads to the necessary conclusion that the Legislature conceived certain circumstances under which the Election Commission shall not dismiss a petition under section 85. Therefore, it is abundantly clear that the word 'shall' in section 82 is not mandatory in nature, especially in so far as no corresponding penalty is anywhere provided for non-compliance with its provisions, obviously because omission to join all the duly nominated candidates at an election was not considered so serious as to warrant extreme penalty of dismissal of the petition.

Section 80 is enacted only to indicate how an election can be called in question and it is provided that this is to be done by making an election petition. Underlying object is to prevent a candidate at an election or any elector from challenging an election by any other method e.g. by a suit in a Civil court. Such an election petition may be presented to the Election Commission alone and not to any other authority under section 81. It is obvious that no violation of the provisions of section 80 has been committed in this case.

There is another method which can be usefully employed to find out whether the non-compliance of the provisions of section 82 should lead to the rejection of a petition or not. The scheme and the object of the Representation of the People Act, 1951 should also be considered in this connection.

It is to be noted that an election petition is the concern not only the parties to it but is an important matter of public interest as it affects the right of the entire Constituency. Its essential characteristics are that it cannot be dismissed in

default and that it cannot be brought to an end at the will of the parties or even by their death without giving an opportunity, in the prescribed manner to all others who might have been the petitioners, to continue it if they wish to do so. A mere perusal of the provisions of clause (3) of section 83 of the Act would show that the Legislature had prominently in view the consideration of ensuring a fair and effectual trial of an election petition. Further it appears that even documents which under the ordinary law are required to be duly stamped or registered before they are admissible in evidence, are accepted in evidence in the trial of an election petition. (*Vide* section 92 of the Act.).

This point has been elaborately discussed in para. 11 of the decision of the Election Tribunal Quilon published in the *Gazette of India, Extraordinary*, Part I, Section 1, dated 11th November, 1952, page 2396e, at page 2396f, and we are in perfect agreement with the view expressed therein.

Section 98 lays down that an Election Tribunal can only pass all the orders enumerated therein including an order of dismissal of a petition at the conclusion of the whole trial which necessarily precludes dismissal of a petition on a preliminary point before the completion of the whole enquiry on all matters in controversy between the parties. The words conclusion of the trial of an election petition in section 98 do not warrant the disposal of a petition on a preliminary point because a Tribunal must consider which of the four orders is to be passed on the basis of the enquiry made by it on all the points raised before it. This view finds further strong support from the clear provisions of section 99. In fact both these sections, i.e., sections 98 and 99 must be read together. The language of these sections leaves no manner of doubt as to the intention of the Legislature on the point. Section 99 imperatively requires a Tribunal to record at the time of the making an order under section 98, findings as to commission of alleged corrupt or illegal practices and the person responsible therefor and as to the awarding of costs in the case. It is quite clear that an enquiry into all the allegations made in the case regarding the commission of corrupt and illegal practices must precede the decision of a case under section 98 of the Act. It has been urged that this election petition ought to be dismissed at this preliminary stage without going into an enquiry into the serious nature of the irregularities as to the improper rejection of the nomination paper of the petitioner. In our view as discussed above such a course cannot legally be adopted by this Tribunal but as the point in issue has been discussed at the Bar in all its bearings we have thought it proper to express our opinion that non-joinder of duly nominated candidates does not entail dismissal of the petition. It may further be observed that the proceedings of the trial of an election petition are analogous to the nature of suits of representative character and the persons who ought to have been made respondents and who fail to apply under section 90(1) of the Act to be ranged as such, should be considered as constructively before the tribunal. As already remarked, the Legislature did not consider it proper to enact a provision in the Act empowering a Tribunal to reject an election petition summarily on the ground of non-joinder of some of the duly nominated candidates as has been expressly done in the case of non-observance of the provisions of sections 81, 83 and 117 of the Act. This omission in the Act cannot be regarded as accidental but must be taken as intentional. In such a case the interpretation of the provisions of the Act must be that which best accords with the public benefit. (*Vide* page 2 Maxwell on Interpretation of Statutes, 9th Edn.)

It will not surely be conducive to public interest if we hush up an enquiry at this initial stage as to the serious irregularity alleged by the petitioner regarding the improper rejection of his nomination paper, materially affecting the result of the election.

It will not be out of place to refer to the provisions of section 151 of the Civil Procedure Code which makes it clear that the inherent powers of a court to do justice should not be hampered by technicalities.

Now we proceed to consider the various latest authorities cited at the Bar on the point in controversy.

(i) Election Petition No. 49 of 1952, decided on the 3rd December, 1952. The decision of the Tribunal is published in the *Gazette of India*, Part II—Section 3, page 951.

In this case two duly nominated candidates were not made parties to the petition. An objection was taken by the respondents that under section 82 of the Act they ought to have been joined as parties to the petition. In order to meet this objection the petitioner filed an application to add these persons as parties. The Tribunal accepted the contention of the counsel for the respondents and held that they were to be joined as parties and remarked that since the Tribunal was allowing the

petitioner to make them parties the question of non-maintainability of the petition did not arise. This case has no value as an instance on the question of interpretation of section 82 because the petitioner did not contest the position taken by the respondents. It may be noted that the petition was not dismissed for non-compliance with the provisions of section 82 of the Act.

(ii) Election Petition No. 10 of 1952, decided on the 21st of July, 1952 by the Election Tribunal Baroda. The decision is published in the *Gazette of India Extraordinary*, Part I—Section 1, dated 11th August, 1952, at page 1893.

In this case the petitioner had brought on the record as respondents only four candidates who stood for election as members of Scheduled Castes and had not impleaded as co-respondents the five candidates who stood for election to the general seat and had prayed that the election of respondent No. 1 to the Legislative Assembly be declared to be void and that he may be granted such other relief or further relief as may be deemed fit by the Tribunal. The Tribunal came to the conclusion that the words "At the Election employed in section 82 of the Act only mean the whole election and do not mean the election so far as it relates to any one of the several seats for which the candidates stood at one and the same election and the partial relief that he had asked for a declaration that the election of respondent No. 1 alone should be held to be void, cannot stand. It would appear from the perusal of para 11 of the judgment that the Tribunal had put a specific question to the counsel for the petitioner during the course of arguments whether in the event of the decision on preliminary objection going against the petitioner, he would apply for an amendment of the petition so as to bring on record all the duly nominated candidates as respondents to which the counsel replied categorically that the petitioner had no intention of doing so. It was again confirmed by other counsel of the petitioner after the judgment of the Tribunal was read upto para 10. It was under these circumstances that the petition was ordered to be dismissed. Thus it is clear from the above that the decision would have been different had the petitioner consented to make the remaining respondents as parties to the petition.

The points discussed by us above are not dealt with in this decision.

(iii) Decision of the election petition No. 287 of 1952 by the Election Tribunal at Lucknow, published in the *Gazette of India, Extraordinary*, Part II—Section 3 dated December 20, 1952, at page 1034.

In this case two duly nominated candidates were not made parties to the petition. The question came up before the Tribunal and the effect of non-compliance with the provisions of Section 82 was discussed and held to be fatal. The learned Tribunal has observed that they have based their conclusion on the scheme of the Act and interpretations of Sections 80, 82, 85, 90(4), and 98(a). Counsel for the petitioner in this case had urged that under Section 90(1) any candidate was entitled to be joined as respondent on furnishing security for costs under section 119 within 14 days after the publication of the petition in the official Gazette, and therefore the petition could not be dismissed by the Commissioner before the expiry of that period on the ground of non-joinder of necessary parties. The Tribunal declined to express any opinion on this reasoning. When the sections noted above were necessary to be considered for forming an idea of the scheme of the Act and the interpretations of those sections, surely the provisions of section 90(1) should have been taken into consideration but this was not done. In our opinion the point urged went to the root of the question in controversy. As we have discussed above a Tribunal can only dismiss a petition, after the conclusion of the trial and not at any earlier stage as laid down in section 98(a) of the Act. This point has not been noticed in the decision of the Tribunal.

If in view of the provisions of section 80 an election petition was to be considered as defective *ab initio* and untenable, a penalty should have been clearly provided therefor somewhere in Part VI of the Act as is done in the case of non-compliance with the provisions of Sections 81, 83 and 117, and further the Legislature could not have enacted section 90(1), allowing addition of parties even after the expiry of the period of limitation prescribed for the presentation of an election petition.

(iv) Election Petition No. 109 of 1952, decided on the 4th of December 1952 by the Election Tribunal, Vellore. The decision is published at page 961 of the *Gazette of India Extraordinary*, Part II—Section 3, dated December 17, 1952. In this case the Tribunal permitted the addition of five duly nominated candidates respondents 10 to 14, by an amendment to the petition, although objection was taken by the respondent that they should not be added as parties. The petition was not dismissed on the ground of non-joinder of certain duly nominated candidates in the original petition.



(v) Election petition No. 242 of 1952, before the Election Tribunal, State of Ajmer, decided on the 18th December, 1952. The decision of the Tribunal is reported at page 1055 in the *Gazette of India Extraordinary*, Part II—Section 3, dated December 24, 1952. The relevant discussion appears at pages 1060 and 1061. The Tribunal held as follows—

"The question is if the petition is not maintainable for the non-joinder of Shri Vensi Mal. It is pointed out on behalf of the petitioner that as under Section 85, the Election Commission has not been given power to dismiss the petition on account of the non-joinder of a party. It follows by implication that the non-joinder of a duly nominated candidate cannot be a ground for the rejection of the petition and the Tribunal has no jurisdiction to reject the petition on that ground. Without subscribing to this view, we are of opinion that the non-joinder of Shri Vensi Mal is not fatal. Section 90(2) of the Act says that subject to the provisions of the Act and any rules made thereunder every election petition shall be tried as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure for the trial of suits. It is settled law that except in cases whether a relief cannot be granted, the non-joinder of a party is not fatal to a suit. Applying the same principle to the present case, we are of opinion that the non-joinder of Shri Vensi Mal is not fatal to the petition as adequate relief can be granted without his being made a party. Either he was interested in challenging the election of respondent No. 1 or in upholding it. In either case, his interests are adequately safe-guarded. The position would have been different if the petitioner had claimed the seat. Reliance on behalf of respondent No. 1 has been placed upon section 92 of the Act which specifies the powers of the Tribunal in respect of certain matters under the Civil Procedure Code. These powers are illustrative and not exhaustive and are not inconsistent with the other rules of procedure governing the non-joinder of parties. In our view the non-joinder of Shri Vensi Mal is not fatal."

(vi) Election Petition No. 232 of 1952 before the Election Tribunal Jullunder, decided on the 11th of October, 1952. The decision of the Tribunal is reported at page 1010, *Gazette of India, Extraordinary*, Part II—Section 3, dated December 19, 1952. In this case the names of seven duly nominated candidates did not appear in the election petition as respondents. It was contended on behalf of the contesting respondent that they were the necessary parties under section 82 therefore the petition should be dismissed. The learned Tribunal has discussed this point from various points of view. Finally it came to the conclusion—

"Consequently considering the problem from all different aspects, we think that though the word 'shall' has been used in section 82 in an imperative sense, yet there is no warrant for us to hold that a non-compliance must result in a summary dismissal of the petition. As we have indicated, it would still be possible and indeed desirable in some cases to proceed with the enquiry which as has been rightly emphasised is of public importance.....Our decision of this issue, therefore, is that all necessary parties have not been impleaded in the petition but it cannot be dismissed on that score."

In this authority the following pertinent observation is noteworthy—

"The Tribunal alone has the power to dismiss an election petition after conclusion of a trial under section 98 of the Act."

(vii) Election petition No 2 of 1952 before the Election Tribunal, Secunderabad, decided on the 4th of November, 1952. The decision of the Tribunal is reported at page 2467 in the *Gazette of India, Extraordinary*, Part I, Section 1, dated November 21, 1952.

In this case the third issue was as follows:—

3 (a) Where Shri Jagan Nath and Mchboob Ali whose nomination papers were rejected, necessary parties and what is the effect of their non-joinder?

3(b) Is the mention of the names of these two sufficient?

The learned Tribunal did not reject the petition on this ground as we find from the findings on issue No. 3 at page 2469. The petition was, therefore, heard on merits.

(viii) Election Petition No. 268 of 1952, S. Sardool Singh Caveeshar petitioner vs. S. Hukam Singh and others, respondents. In this case respondents Nos. 9 to 12 who were duly nominated candidates were not joined as respondents to the petition. The question arose whether they were the necessary parties under Section 82 of the Act. The learned Tribunal held that section 82 of the Act is directory about the persons who should be joined as necessary parties to the election petition. They came to the conclusion that "though in section 85 of the Act a power is given to dismiss the petition for non-compliance of the provisions of section 80(1) or section 83 of section 117 and the same power may be exercised by the Tribunal under section 90(6)(4) of the Act, there is no provision in the Representation of the People Act or the Rules thereunder for such dismissal of the petition for non-compliance of the provisions in section 82. The power of the Tribunal to order joinder of necessary parties will, therefore, be regulated and the effect of non-joinder determined according to the provisions as regards the trial of suits under the Civil Procedure Code which according to section 90(2) of the Representation of the People Act, 1951, govern the procedure of the Tribunal in the trial of Election Petition."

(ix) Decision of the election petition No. 33 of 1952, reported at page 2261, in the *Gazette of India, Extraordinary*, Part I—Section 1, dated October 10, 1952. The Tribunal has observed as follows at page 2264—

"The Tribunal has carefully considered the provisions of sections 117, 85, and 90(4) of the Act and in the opinion of the Tribunal the Tribunal is not bound to dismiss the petition for non-compliance of the provisions of section 119. It has a discretion in the matter as indicated by the word 'may'. The Act while it provides how the Election Commission should act in case of contravention of section 117, uses the word 'shall' in section 85 of the Act but it advisedly used the word 'may' when it refers to the Tribunal in section 90(4) of the Act. The Tribunal is not sitting in appeal as a merely appellate body over the action of the Commission and it is not bound to pass an order which the Commission was required to pass. Shri Sudhalkar realised the different phraseology employed with regard to the Election Commission and the Tribunal but he contended that in the context of sections 85 and 117 'may' in section 90(4) had the force of 'shall'. The Tribunal does not accept the contention of Shri Sudhalkar. The words notwithstanding anything contained in section 85 "indicate that notwithstanding the fact that it is mandatory for the Election Commissioner to dismiss the petition for the contraventions referred to, it is discretionary for the Tribunal whether to dismiss the petition or not."

The ratio decidendi used by the Tribunal may safely be adopted for interpreting the provisions of sections 81 and 83. It goes without saying that the non-observance of the provisions of section 82 for which no penalty is provided, stands on a better footing and consequently dismissal of a petition on that score is not warranted.

It appears that the weight of authorities is more in favour of the contention of the petition than the respondent. We are, therefore, justified in holding that although the three persons named above, were duly nominated candidates and they have not been made parties to the petition, such non-joinder does not attract the penalty of dismissal of the petition on that score as the provisions contained in section 82 of the Act are in our view directory and not mandatory.

This issue is, therefore, decided accordingly and it is ordered that other issues arising in this case be framed and the case be heard on merits.

(Sd.) KARTAR SINGH, Member.

(Sd.) JIA RAM SAXENA, Member.

The 28th January 1953.

In this election petition Sardar Joginder Singh seeks to have the election of the Banur Constituency for the Patiala and East Punjab States Union Assembly declared wholly void on the ground that his nomination paper was improperly rejected and thereby the result of the election has been materially affected. It is a double member Constituency, one seat of which is reserved for the Scheduled Castes. Respondent No. 1 Sardar Harchand Singh was returned from the reserved seat and respondent No. 2 Shri Bishen Nath from the general seat. There are 12 other respondents, who have not taken interest in the petition. Even against respondent No. 2 the proceedings have been *ex parte*. Respondent No. 1 has raised two preliminary objections to the petition, (a) that the petition is not verified according to law, and (b) that four other duly nominated candidates, namely, Shri Walaiti

Ram, Sardar Ranjit Singh, Sardar Jaswant Singh, and Sardar Sher Singh have not been made parties to the petition; and he urges that these defects are fatal to the petition.

There are two preliminary issues in the case as below—

1. Is the petition not verified according to law, if so, what is its effect?
2. Were Shri Walaiti Ram, Sardar Ranjit Singh, Sardar Jaswant Singh and Sardar Sher Singh duly nominated candidates at the election of Banur Constituency and have they not been made parties to the petition; if so, what is its effect?

At the foot of the petition the petitioner has verified it thus—

"I, Joginder Singh, verify that the above mentioned contents of paragraphs No. 1 to 10 are true to the best of my knowledge."

The verification is dated and signed by the petitioner. So there is no basis in the objection on behalf of respondent No. 1 that the verification of the petition is not dated. In the petition as published the date appears to have been omitted by some mistake and it was this that led to this contention. Or.6 R.15, C.P.C., lays down that the person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. It is apparent that the form of verification adopted by the petitioner is not strictly in conformity with sub-rule 2 of R.15 of Or.6, but it is also clear at the same time that the verification is substantial compliance of the sub-rule. Therefore, the defect in verification of the petition is not of such a nature as to justify the conclusion that there has not been substantial compliance of the provisions of sub-section 1 of section 83 of the Representation of the People Act, 1951 (hereinafter to be called as the Act), and so on this ground the petition is not liable to be dismissed.

The Returning Officer, Sardar Puran Singh D.W. 1 has deposed that the nomination papers Ex. D.1 of Sardar Jaswant Singh, Ex. D.2 of Sardar Ranjit Singh, and Ex. D.3 of Shri Walaiti Ram were presented to him by these persons for nomination to the Banur Constituency. He accepted those nomination papers of these three candidates. It appears that after scrutiny and acceptance of their nomination papers these three candidates withdrew from the contest. After this evidence had been led, the petitioner, on 5th January, 1953, made an application that Sardar Ranjit Singh, Sardar Sher Singh and Shri Walaiti Ram be brought on the record under Or.1 R.10, C.P.C., as necessary parties to the petition. There is no evidence that Sardar Sher Singh was a duly nominated candidate. The application of the petitioner does not seek to add Sardar Jaswant Singh as a necessary party to the petition.

A "candidate" is defined in section 79(b), and means a person who has been or claims to have been duly nominated as a candidate at an election. It cannot thus be denied that Shri Walaiti Ram, Sardar Jaswant Singh, and Sardar Ranjit Singh were candidates, within the scope of Section 79(b), at the election for Banur constituency. However, the expression "duly nominated" is not defined in the Act. On receiving the nomination paper under section 33, the Returning Officer under section 35 has to inform the person delivering the same of the date fixed for scrutiny. On such date the nomination paper is scrutinised and is either accepted or rejected under section 36. Then section 37 provides for withdrawal by a fixed date. When withdrawal has taken place under section 37(1) it is the duty of the Returning Officer under section 38 to prepare and publish a list of valid nominations in such manner as may be prescribed. Section 54(6) provides:

"In this section, references to candidates shall be construed as references to candidates who were duly nominated and who have not withdrawn their candidatures in the manner and within the time specified in sub-section (1) of section 37".

It is evident that the conclusion to be drawn from reading section 38 with section 54(6) is that "validly nominated candidates" are those who, after the acceptance of their nomination papers, have not withdrawn and whose names are published under section 38, and "duly nominated candidates" are all those whose nomination papers have been accepted including those who have withdrawn. The expression "duly nominated candidates" is, it follows, wider than the expression "validly nominated candidates". The former expression includes, at least, all candidates whose nomination papers were accepted and who withdrew from the contest. The distinction is made clear by R.2(f) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which defines "a validly nominated candidate" as "a candidate who has been duly nominated and

has not withdrawn his candidature in the manner and within the time specified in sub-section (1) of section 37 or in that sub-section read with sub-section (4) of section 39, as the case may be." So a candidate whose nomination paper has been accepted, but who has withdrawn from the contest, is a duly nominated candidate. The three candidates named above were no doubt duly nominated candidates. Section 82 of the Act provides:—

"A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

The language of the section is plain and unambiguous. The word "shall" in this section has been used in peremptory and mandatory sense. The language of the section being clear the ordinary and normal meaning of the language must be taken as such, unless there are adequate grounds for departing from that meaning. In Maxwell, 8th Edn., at page 3, it is stated that "when the language is not only plain but admits of one meaning the task of interpretation can hardly be said to arise", and again at page 4, "where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced even though it be absurd or mischievous. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein rather than from any notions which may be entertained by the court as to what is just or expedient." So the plain meaning of section 82 must be given effect to. It is contended on behalf of the petitioner that the word "shall" in this section has been used in directory and not mandatory sense. Of course there may be cases in which it is open to a court to read the word "shall" as "may", if there are justifiable grounds for the same. Two grounds have been urged for the suggested construction of section 82. The first is that while section 85 empowers the Election Commission to dismiss a petition for non-compliance with the provisions of sections 81, 83 or 117 and the Tribunal is given similar power under section 90(4), it is nowhere provided that a petition can be dismissed for non-compliance with the provisions of section 82. It is stressed that omission of penalty for such non-compliance means that section 82 was intended to be merely directory. Section 81 provides for presentation of a petition (a) by a competent person, (b) within prescribed period, and (c) to the Election Commission. Section 83 requires that the petition shall be duly verified according to the law for verification of pleadings and that it shall be accompanied by a concise statement of material facts with list of particulars of any corrupt or illegal practice. And section 117 requires the petitioner to enclose a receipt with the petition for deposit of the amount of the security. Non-compliance with any of these provisions would be obvious on a mere glance at the petition as presented. It has, therefore, been provided in section 85 that the Election Commission shall dismiss the petition for such non-compliance. The same power has been vested in the Tribunal under section 90(4) for the obvious reason that it should be open to a respondent to urge objection as to non-compliance of those provisions before the Tribunal also; and if this power had not been given to the Election Tribunal then the petitioner would have had a strong argument in his favour, very probably unanswerable, that the Election Commission not having dismissed the petition under section 85 the Tribunal had no power to re-open the question. It was to meet such a situation that the Legislature has vested the discretion in the Tribunal under section 90(4) to dismiss the petition for the same reasons as the Election Commission can under section 85. Section 82 could not find place in section 85 for a good reason, that is, the question whether all the duly nominated candidates have or have not been made parties to the petition would ordinarily entail enquiry into this matter and also into the fact who were the duly nominated candidates. The Legislature did not intend to burden the Election Commission, receiving Election Petitions from all over the country, with such an enquiry. After the presentation of a petition to the Election Commission it is transmitted to an Election Tribunal and it is there that such an enquiry can more properly and appropriately be made. As section 82 could find no place in section 85, naturally it has not been mentioned in section 90(4). Therefore, the mere fact that section 82 is not referred to in sections 85 and 90(4), does not point to a conclusion that the Tribunal has no power to dismiss an election petition for non-compliance with the provisions of section 82. Such power of dismissal is to be found in section 98(a). But it is urged on behalf of the petitioner that the Tribunal has power to pass an order dismissing an election petition under section 98(a) "at the conclusion of the trial of an election petition." It is said that dismissal of an election petition for non-compliance with the provisions of section 82 after an enquiry in the matter, would not be its dismissal "at the conclusion of the trial". It has not been appreciated that it would be ineffective to continue trial of the other matters in the petition when it is liable to be dismissed on the short ground of non-compliance with the provisions of section 82. In such circumstances, the words "at the conclusion of the trial" in section 98 would clearly

apply to the disposal of the petition after enquiry as to non-compliance with the provisions of section 82 for the petition being incompetent and not liable to be proceeded with there would be nothing more left for trial. The argument that the words "at the conclusion of the trial" in section 98 mean that the last allegation in the election petition must be tried before an order under that section can be made, even though the trial and decision of one matter only results in final disposal of the petition, is untenable. Therefore, a petition can be dismissed under section 98(a) of the Act for non-compliance with the provisions of section 82. The second ground urged for reading the provisions of section 82 as directory is that section 90(1) allow "any other candidate" to apply to be made a party to the petition within fourteen days after its publication subject to giving security for costs under section 119 of the Act, and if the intention of the Legislature was that no party could be added to the petition after the period prescribed for its presentation, it would not have given a right to other candidates to become parties within fourteen days after its publication. The duly nominated candidates must be made parties to the petition by the petitioner under section 82 and it is obvious that the words "any other candidate" in section 90(1) do not refer to a duly nominated candidate. This view is supported by the Delhi Election Tribunal in election petition No. 3 of 1952, *Shri Suraj Bhan Vs. Shri Hem Chand Jain and others*, page 2443 of section 1, Part I, Gazette of India Extraordinary, dated 19th November, 1952, in which at page 2445, it has been observed that section 90(1) of the Act, which requires the petition to be published, permits any other candidate to appear and ask to be joined to the petition, which apparently refers only to a candidate not "duly" nominated. A duly nominated candidate has a right to be made a respondent by the petitioner to an election petition under the statutory duty cast upon the latter by section 82, and thus he has also a right not to be relegated to a position of being compelled to apply to be become a respondent under section 90(1) subject to the embarrassment of furnishing security under section 119 of the Act. Section 90(1), therefore, does not relate to a duly nominated candidate and if it allows "any other candidate" to join as a respondent in the election petition that would not lead to compliance with the provisions of section 82. So even the second ground urged is no reason for construing the word "shall" in section 82 as directory.

In the recent decisions of the Tribunals also this section has been interpreted as mandatory and peremptory and not as directory. The decisions in point are Election Petition No. 19 of 1952, *Nagjibhai Gobindbhai Arya Vs. Mithabhai Ramji Chawhan*, reported at page 1896 in Section 1, Part I, the Gazette of India Extraordinary, dated 11th August, 1952, Election Petition No. 232 of 1952, *Prem Nath Vs. Ram Kishan and others*, at page 1010, in Section 3, Part II, the Gazette of India, Extraordinary dated 19th December, 1952, and Election Petition No. 287 of 1952, *Pritam Singh Vs. Charan Singh and others*, at page 1034, in section 3, Part II, the Gazette of India, Extraordinary, dated 20th December, 1952. On behalf of the petitioner a certified copy of an order, in Election Petition No. 268 of 1952, *S. Sardool Singh Caveeshar Vs. S. Hukam Singh and others*, has been produced, in which the Election Tribunal at Patiala has observed: "Section 82 of the Act is directory about the person who should be joined as necessary party to an election petition. This direction as we had occasion to observe recently in connection with another election petition has in our view been given by the Legislature in order to ensure that all persons who were concerned with the election from the earliest stage should be present before the Tribunal in order to enable the Tribunal to get all material facts and information from all probable sources and upon it to determine if the election had been free and fair or not. This we think is the purpose of the Legislature in enacting the provisions in Part VI of the Act relating to disputes regarding elections and their settlement by Election Tribunals to whom the election petitions may be referred. Therefore, if the petitioner has omitted to bring a proper and a necessary party before the Tribunal, the Tribunal should have power to call such a party before it." This is the only decision cited in which the provisions of section 82 have been maintained to be directory. The reason given by the Tribunal for construing the section as directory is not a sufficient ground for not given effect to the plain language of the section. In Election Petition No. 287 of 1952, *Pritam Singh Vs. Charan Singh*, in Section 3, Part II, the Gazette of India Extraordinary dated 20th December 1952, at page 1036, reference has been made to *Ilazara Rani's* case in which it was observed that the Rule (about joinder of parties to an election petition) being mandatory it was unnecessary to search for reasons to justify it. The provisions of section 82 of the Act are, therefore, mandatory and peremptory and not merely directory.

The next question for consideration is whether duly nominated candidates, who were not made parties to the petition by the petitioner within the prescribed period of limitation, can now be added as parties to the petition having regard to the mandatory provisions of section 82 of the Act? Under section 82 it is the

bounden duty of the petitioner to join all duly nominated candidates as respondents to the petition at the time of the presentation of the petition. Section 80 of the Act lays down:—

"No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

The word "presented" cannot in this section be read as "handed over" only. It means presented after compliance with the provisions of sections 80 to 84 of the Act, which deal with the presentation of, the parties to, the contents of, and the reliefs in the petition. When a petition has been prepared in conformity with sections 81 to 84 and made over to the Election Commission within the prescribed period of limitation it will be taken to have been presented within the meaning and scope of section 80. However, when a petition has been presented within that time without impleading the respondents according to section 82, and the time has expired for filing the petition, it would not be open to a petitioner to add such parties to the petition after the period of limitation. The petition would not be considered to have been presented against such parties in accordance with the provisions of section 80 of the Act. There are only two sections in the Act which refer to parties to an election petition and they are sections 82 and 90(1). Neither section empowers the Tribunal to add a party to the petition. Section 82 makes it the imperative duty of the petitioner to join all duly nominated candidates as respondents to the petition and section 90(1), gives a right to any other candidate to join in as a respondent within fourteen days after the publication of the petition. The Legislature has given full scope to its intention of bringing all interested parties on the record in these two sections, which exhaust the provisions relating to the joining of the parties to the petition. They provide all possible opportunity to any person interested in the petition to be on the record, and that being so, no residuary power has been left to the Tribunal to join parties to the petition after the period prescribed in relation to those sections. There is nothing to support the opinion of the Patiala Tribunal in its order in Election Petition No. 268 of 1952 that the Tribunal should have power to call a proper and a necessary party to the petition before it. Indeed the authority is to the contrary as in the Bombay City case, 2 Hammond 71, with regard to similar provisions of law as section 90(1) of the Act, the Commissioners, when the petitioner had claimed a seat and under the Rules it was incumbent upon him to join all other candidate as respondents, held that the petitioner could not be allowed to amend his petition by joining the remaining candidates as respondents, who had not been so joined in the original petition, and that they had no power under the Rules to order or to permit the joinder of candidates who were nominated at the election but had not been joined as respondents in the original petition. It is thus clear that the Tribunal has no power to add parties to the petition and they can only be added under sections 82 and 90(1) of the Act. It is contended on behalf of the petitioner that according to section 90(2) of the Act, Code of Civil Procedure applies to the trial of the petition and Or. 1 R. 10, C.P.C., permits addition of parties. The addition of parties under Or. 1 R. 10 amounts to an amendment of the plaint. It is well settled that no amendment of an election petition is permissible except within the very limited scope of section 83(2) which permits amendment of particulars only as given in the list of particulars with the petition. It does not even allow amendment of the list itself. Therefore, no amendment of the petition can be allowed under Or. 1 R. 10, C.P.C. Such an amendment of the petition for addition of parties, under similar provisions of law, was disallowed in the Bombay City case and this view also finds support from the cases reported at pages 63 and 316 of Vol. 1 and at pages 80 and 145 of Vol. 2 of Doria's Indian Election Cases. Some other decisions of the Tribunals under the old law in support of the same view will be found at page 1036 of the report of Election Petition No. 287 of 1952, cited above. The provisions of section 90(2) give clear indication that the Code of Civil Procedure applies to the trial of a petition and not to the petition itself. This is also clear from Chapter II of Part III, comprising of sections 80 to 84 of the Act, which specifically deal with the matter of the form of an election petition. The Code of Civil Procedure applies to the trial of a petition subject to those provisions. In the Saharanpur case, 1 Hammond, at page 199, in relation to Rule 35, which provided that enquiry into an election petition shall be conducted "as nearly as may be in accordance with procedure applicable under the Civil Procedure Code of 1908 to the trial of suits", and that provision is same as in section 90(2), the Commissioners held that that Rule made applicable the Civil Procedure Code to the conduct of the enquiry only and not to the petition. There has been no change in the law in this respect. Therefore, section 90(2) of the Act applies to the trial of an election petition and not to the election petition itself. This also finds support from similar observations at page 2268

of petition No. 83 of 1952, Parshotam Das Ranchodas Patel Vs. Shanti Lal Girdhari Lal Parikh and others, at page 2261 in Section 1, Part I, the Gazette of India, Extraordinary, dated 10th October, 1952. So under Or. 1 R.10, C.P.C., no amendment of the original petition is permissible. But even if such an amendment was permissible it would not be allowed under Or. 1 R.10, C.P.C., after the expiry of the period of limitation for making the petition just the same as a necessary party is not allowed to be added after the period of limitation for institution of a suit in a partnership account suit (1930 Madras 714 and 1933 Sind 121) or in a partition suit (56 Indian Cases 304). Even under that provision such an amendment to add a party after the period of limitation will be rejected. The result is that the Tribunal has no power to add a duly nominated candidate as a party to the petition after the expiry of the period of limitation, which in this case expired long ago, for presentation of a petition. The application of the petitioner to add such duly nominated candidates as parties to the petition must, therefore, be rejected.

There are seven recent decisions of the Tribunals on the point that need consideration. In Election Petition No. 53 of 1952, page 2369e, the Gazette of India, Extraordinary, Part I, Section 1, dated 11th November, 1952, the Election Tribunal at Quilon has observed at page 2369g thus: "Section 90(4) of the Act empowers the Tribunal to dismiss in limine an election petition which does not comply with the provisions of section 81, section 83 or section 117. It does not authorize the dismissal of a petition for non-compliance with section 82, which but prescribes who may be joined as respondents to an election petition". In Election Petition No. 49 of 1952, page 951, in section 3, Part II, the Gazette of India, Extraordinary, dated 12th December, 1952, parties were added to the petition without discussion of the matter by a short order to be found at page 954. In Election Petition 109 of 1952, page 961, in Section 3, Part II, the Gazette of India, Extraordinary, dated 17th December, 1952, at page 963, it is stated that parties were impleaded for reasons given in a separate order, but that order is not available for consideration. In Election Petition No. 232 of 1952, page 1010, in Section 3, Part II, the Gazette of India, Extraordinary, dated 19th December, 1952, the Tribunal held that the provisions of section 82 are mandatory, but it further came to the conclusion that the petition ought not to be dismissed where the Tribunal would be able to determine the question between the petitioner and the contesting respondent without requiring the presence of the parties who have not been impleaded, but where the Tribunal cannot determine the question without those parties the petition will end in dismissal. This case does not appear to have allowed the joinder of parties. In Election Petition No. 242 of 1952, page 1055, in Section 3, Part II, the Gazette of India, Extraordinary, dated 24th December, 1952, the Tribunal took the same view as in the last mentioned case. In the first two of these decisions there is no discussion of the matter and in the last two the parties appear not to have been added. So these decisions do not help in solution of the question whether the parties should or should not be added to the petition after the expiry of the period of limitation. In Election Petition No. 19 of 1952, page 1893, in Section 1, Part I, the Gazette of India, Extraordinary, dated 11th August, 1952, and in Election Petition No. 287 of 1952, page 1054, in Section 3, Part II, the Gazette of India, Extraordinary, dated 20th December, 1952, the view that I have taken found favour.

The last question for consideration is the effect of non-joinder to the petition of the duly nominated candidates who are required by section 82 to be made respondents by the petitioner. It has already been discussed above that the Tribunal has power under section 98(a) to dismiss the petition. It has been argued that under Or. 1, R. 9 C.P.C., a suit cannot be dismissed for non-joinder of parties and so the petition ought not to fail on this ground. It has also been pointed out that where a necessary party to a suit is not brought on the record within the period of limitation in a partnership account suit or a partition suit, the suit is to be dismissed on that ground alone. The reason is that the suit is at its inception not constituted according to law and is defective. Addition of parties to it, after the period of limitation, cannot cure the defect and re-suscitate the suit that is bad in law from the very beginning. In such cases Or. 1, R. 9 has no application. In the Present petition, contrary to the mandatory provisions of section 82, the petitioner failed in his duty to bring on the record the three duly nominated candidates within the period of limitation. He presented the petition without those parties. The petition was, therefore, not framed according to the provisions of section 82 and when presented to the Election Commission was a defective petition as it was not constituted according to law. So in fact there was no presentation of a proper petition under section 80 of the Act. No election can be called into question by an election petition not satisfying the provisions of section 80. Therefore, upon this consideration the petition must fail. The Election Law before the Act, by a similar imperative and mandatory provision, made it a duty of the petitioner to implead all duly nominated candidates when he claimed a seat, but

not when he did not claim it, in which case the returned candidate was the only respondent whose joinder was necessary under the law. The Election Tribunals, without exception, held that where the petitioner claimed a seat and had not joined all the duly nominated candidates as respondents his prayer for the claim of the seat must fail. The decision in the Bombay City case was to this effect and there are other cases in the same strain cited at page 1036 of the report of Election Petition No. 287 of 1952. This view is also supported by the cases reported at pages 68 and 316 of Vol. I and pages 80 and 145 of Vol. 2 of Doabla's Indian Election Cases. In recent decisions in Election Petitions Nos. 19 of 1952 and 287 of 1952 this view has been sustained and following it the election petitions have been dismissed. In Election Petitions Nos. 332 and 242 of 1952 an attempt has been made to soften the consequence inevitable from the non-compliance of sections 80 and 82 of the Act by holding that where the Tribunal can find a final solution to the question between the petitioner and the respondent on the record, in the absence of parties whose joinder was imperative under section 82, the petition ought not to be dismissed, but where this cannot be done the result would be the dismissal of the petition. There is no justification for this distinction in the application of the mandatory provisions of sections 80 and 82 to a petition. That was substantially the law before the Act, but in the Act the Legislature has thought fit to make a departure from the previous law and to abolish the distinction. Now, whether the petitioner claims the seat or not, it is his imperative duty under section 82 to make all duly nominated candidates respondents to the petition. The Tribunal must give effect to the plain and peremptory language of the statute. As already pointed out the section being mandatory it is unnecessary to search for reasons to justify it. It follows that the provisions of section 82 must have their full effect, without distinction whether the question between the petitioner and the respondent present can or cannot be finally disposed of without joining the other respondents as required by that section. So the consequence of not joining the three duly nominated candidates to the petition in this case must be its dismissal.

The 28th January 1953.

(Sd.) MEHAR SINGH, *Chairman*.

#### ORDER

In the view taken by the majority of the Tribunal both the issues are decided against the respondent.

(Sd.) MEHAR SINGH, *Chairman*.

(Sd.) JIA RAM SAXENA, *Member*.

(Sd.) KARTAR SINGH, *Member*.

The 28th January 1953.

[No. 19/103/52-Elec.III/12074]

**S.R.O. 1515.**—Whereas the election of Jathedar Mohan Singh, as a member of the Legislative Assembly of the State of Punjab, from the Tarn Taran constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohan Singh, son of Sardar Jagat Singh, Village Tur, Tehsil Tarn Taran, District Amritsar;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, JULLUNDUR

##### ELECTION PETITION No. 183 OF 1952.

S. Mohan Singh son of S. Jagat Singh resident of village Tur, Tehsil Tarn Taran, District Amritsar—Petitioner.

##### *Versus*

1. Jathedar Mohan Singh son of S. Tehl Singh resident of Nagoke, Tehsil Tarn Taran, District Amritsar.
2. S. Ajit Singh son of S. Puran Singh, resident of Khadur Sahib, Tehsil Tarn Taran, District Amritsar.
3. S. Amar Singh son of S. Waryam Singh, resident of Pandori Rakhat Mal, Tehsil Tarn Taran, District Amritsar.



4. S. Angrez Singh son of Shri Bhadur, Khadur Sahib Tehsil Tarn Taran, District Amritsar;
5. S. Prem Singh son of Ganda Singh of Lohka Tehsil Patti, District Amritsar;
6. S. Prem Singh son of Ganda Singh of Lallpur, Tehsil Tarn Taran, District Amritsar;
7. S. Jiwan Singh son of Pal Singh Chawinda Khurd, Tehsil Ajnala, District Amritsar;
8. Sh. Charan Das son of Shri Palu Ram, Kucha Balmikan, Gilwali Gate, Amritsar;
9. S. Chuhan Singh son of S. Sawan Singh, Rayya, Tehsil Amritsar;
10. S. Darshan Singh son of S. Bawa Singh of Jhabbal, Tehsil Tarn Taran, District Amritsar;
11. S. Dayal Singh son of S. Basant Singh of Fatehbad, Tehsil Tarn Taran, District Amritsar;
12. Shri Radhu son of Tehla Plasour Road Tarn Taran, District Amritsar;
13. Shri Ram Saran Dass son of Shri Duni Chand, village Kiri Shahi, Tehsil Tarn Taran, District Amritsar;
14. S. Ranga Singh son of S. Narain Singh Bazar Nurdi Chowk Baba Bhoariwala, Tarn Taran, District Amritsar;
15. S. Sadhu Singh son of S. Jiwan Singh resident of Tharu Tehsil Tarn Taran, District Amritsar;
16. S. Sarabdeep Singh son of S. Hazara Singh of Thathian Tehsil Tarn Taran, District Amritsar;
17. S. Sardar Singh son of S. Sohan Singh of village Rataul Tehsil Tarn Taran, District Amritsar;
18. S. Sarup Singh son of S. Labh Singh of village Naushera Pannua, District Amritsar;
19. S. Sohan Singh son of S. Kishan Singh, Camp Jail Yohl, District Kangra;
20. S. Sohan Singh son of S. Labh Singh, Kot Dharam Chand Tahsil Tarn Taran, District Amritsar.
21. S. Shankar Singh son of S. Indar Singh, House No. 169/7, Kucha Bhai Nihal Singh Tarn Taran, District Amritsar;
22. S. Kishan Singh son of Jawala Singh, village Vain Poin, Tahsil Tarn Taran, District Amritsar;
23. S. Gurbux Singh son of S. Partap Singh, Tarn Taran, District Amritsar;
24. S. Lal Singh son of Mehtab Singh of Nagoke Tehsil Tarn Taran, District Amritsar;
25. S. Mohan Singh son of Indar Singh, Cooper Road, Amritsar;
26. S. Mohindar Singh son of S. Ilra Singh of House No. 47 Ungarh, Amritsar;
27. S. Narain Singh son of S. Jawala Singh Sarhali Tehsil Patti, District Amritsar;
28. S. Narain Singh son of Tehl Singh of village Kang, Tehsil Tarn Taran, District Amritsar;
29. S. Harnam Singh son of S. Santa Singh resident of Khojkipur, Tehsil Tarn Taran, District Amritsar—*Respondents*.

Election petition presented under the provisions of Part VI Chapter II of the Representation of the People Act, 1951 and the Rules made thereunder, against the respondents.

*Prayer:*—That the election of the respondent No. 1 returned candidate from the Tarn Taran Constituency be declared null and void.

## CORAM:

Shamsher Bahadur Esquire, Barrister-at-Law, District Judge—*Chairman*.

Ch. Chhaju Ram, B.A. (Hons) LL.B., P.C.S. Addl. District Judge:

S. Mohindra Singh Pannun, M.A., LL.M., D.C.P., Advocate—*Members*.

## JUDGMENT.

(PER CHHAJU RAM—*Member*).

This is an election petition by S. Mohan Singh son of S. Jagat Singh, resident of village Tur, Tehsil Tarn Taran, District Amritsar against the election of respondent No. 1 Jathedar Mohan Singh son of S. Tehl Singh of village Nagoke, Tehsil Tarn Taran, District Amritsar. The petitioner, respondent No. 1 and respondents Nos. 2 to 29 were the candidates for the Punjab Legislative Assembly from Tarn Taran Constituency No. 96. Respondent No. 1 secured 22060 votes, while the petitioner obtained 17658 votes. This was a double-member constituency and Darshan Singh, the second returned candidate from the reserved seat of this constituency, secured 12004 votes. The petitioner alleges in the petition that the election of respondent No. 1 is void, as the result of the election was materially affected by the non-compliance with the provisions of law laid down in the Representation of the People Act, 1951 and the rules made thereunder. The grounds mentioned in para. No. 3 of the petition in this respect are as follows:—

(a) That the mandatory provisions of rule 19(3)(b) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 have not been complied with. The petitioner Mohan Singh is son of Jagat Singh of village Tur, Police Station Sarhali, district Amritsar. S. Mohan Singh son of S. Indar Singh of Cooper Road, Amritsar, respondent No. 25 was another duly nominated candidate who subsequently withdrew his candidature. The said S. Mohan Singh son of S. Indar Singh could in no case be a validly nominated candidate and his name could in no manner be included and displayed either in the list of validly nominated candidates published under rule 11 or in the notice under Sub-rule 3(b) of rule 19 of the above stated Rules. The name of the petitioner was never entered, published or displayed in such notice. The election of this constituency commenced on 7th January, 1952 and finally concluded on 21st January, 1952. The non-compliance with the aforesaid rule resulted in an over-all belief throughout the polling stations and polling booths of Tarn Taran constituency among the voters during 7th and 21st January, 1952 that the petitioner was not a validly nominated candidate and this very seriously and materially affected the result of election.

(b) That the ballot boxes provided at each polling station did not contain and include any ballot box in the name of the petitioner. On the other hand, the ballot boxes were placed on each of the polling booths in the name of Mohan Singh son of Indar Singh who had withdrawn his candidature on 12th November, 1951. It was then found that the symbol of bow and arrow had also been allotted to Mohan Singh son of Indar Singh and that the list pasted in the polling stations mentioned and displayed the name of the said Mohan Singh son of S. Indar Singh.

(c) That the ballot boxes provided at the polling stations during the polling days were not constructed in the manner provided under rule 21 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951. The ballot boxes could be easily tampered with and the ballot papers could be withdrawn therefrom without the boxes being unlocked and seals being broken.

(d) That the counting of votes polled in the election was done and completed in utter disregard of the obligatory provisions of law contained in sub-rule (vi) of rule 46 of the aforesaid Rules.

It was further alleged in the petition that the election of the respondent No. 1 is void because it was procured and induced and the result of the election was materially affected by the following corrupt and illegal practices committed by or with the sanction or connivance of respondent No. 1 and his agents:—

(a) That respondent No. 1 and his agents and other persons with the connivance of respondent No. 1 and his agents committed corrupt practice of bribery by offering and paying at Tarn Taran a sum of Rs. 500 as gratification to S. Sardar Singh, respondent No. 17 for withdrawing from the election contest in favour of respondent No. 1 and also by promising and recommending a Congress ticket for the upper house of the Punjab Legislature as a reward for having withdrawn his candidature in favour of respondent No. 1. Full particulars of this corrupt practice are given in Schedule A.

(b) That the respondent No. 1 and his agents and other persons with the sanction and connivance of the said respondent and his agents paid various sums of money and offered liquor to the voters with the object of inducing them to vote for the respondent No. 1 and that in some cases money was paid to the voters as a reward for having voted for respondent No. 1. The list of the persons so bribed is given in Schedule B.

(c) That the respondent No. 1 and his agents and other persons with the connivance of the respondent No. 1 and his agents interfered with the free exercise of the electoral rights of the voters. In some cases the candidates and the electors were threatened in the matter of their services; in other cases they were threatened with physical injury and the injuries of social ostracism and excommunication and in some other cases they were told that they would become objects of divine displeasure if they would not vote for respondent No. 1. The particulars of this corrupt practice are set out in Schedule C.

(d) That the corrupt practice of the removal of a ballot paper from polling station No. 22 Dalawa pur Kothi was committed by respondent No. 1 and his agents and by other persons with the connivance of the respondent No. 1 and his agents. The particulars of this corrupt practice are shown in Schedule D.

(e) That the respondent No. 1 and his agents and other persons with the connivance of the said respondent and his agents systematically used National Flag for the furtherance of the prospects of the said respondent. The particulars are given in Schedule E.

(f) That the corrupt practice of obtaining and procuring assistance of persons serving under the State Government for the furtherance of the prospects of respondent No. 1 had been committed by the said respondent and his agents and by other persons with the connivance of the respondent and his agents. The particulars of this practice have been given in Schedule F.

All the respondents were duly served and only respondent No. 1 contested this petition. He raised preliminary objections that the presentation of the election petition was not proper; that the petition was bad for non-joinder of parties; that S. Narain Singh who was duly nominated candidate in the election had not been joined as required by Section 82 of the Representation of the People Act; that the petition had not been verified by the petitioner in accordance with the provisions of Section 83; that the Tara Taran constituency in respect of which this petition was made, was a double-member constituency from which two candidates, namely, S. Mohan Singh respondent No. 1 and S. Darshan Singh respondent No. 10 were duly declared elected; that the grounds in para No. 3 of the petition for declaring the election of respondent No. 1 void were such as would make the election of both the candidates void and as the petitioner had not challenged the election of respondent No. 10, the petition was defective and merited dismissal; that the deposit was not made by the petitioner according to the Rules and that the allegations in paras. Nos. 3 and 5 of the petition were vague and should, therefore, be deleted.

On merits, the respondent No. 1 denied that the provisions of Rule 19(3)(b) of the Representation of the People Rules, 1951, had not been complied with or that the petitioner suffered any loss as alleged in the petition. It was also denied that any such non-compliance had materially affected the result of the election. It was admitted that S. Mohan Singh respondent No. 25 withdrew his candidature in accordance with law. It was, however, denied that the respondent No. 25 was shown in the list of validly nominated candidates published under rule 11 or in the notice under sub-rule 3(b) of rule 19. It was pleaded that the names and the symbols which alone were required to be displayed were displayed outside and inside each polling station. It was further pleaded that the allegation that the non-compliance with the rule resulted in any over-all belief as mentioned in the petition was baseless. It was denied that any one acted on any such belief. It was also pleaded by respondent No. 1 that the petitioner and his agents had throughout been canvassing and making propaganda through press and platform throughout the period of election in favour of the petitioner; that his symbol was bow and arrow; that in the party papers of the petitioner, such as *Ajit*, *Parbhat*, *Akali Patra* and in innumerable posters published by him the voters of the constituency were requested to vote for the petitioner and in fact the voters were made duly aware of the fact that the petitioner was the Akali candidate in this contest; that that being so the allegation of material effect on the election was clearly an afterthought and had no basis; that the allegation about the absence of ballot boxes was quite baseless, that at every polling station and at every polling booth a ballot box as required by law was allotted to the petitioner and placed for him, that respondent No. 25 had not been allotted the symbol of bow and arrow; that as a matter of fact he had

withdrawn his candidature before the allotment of symbols; that at none of the booths any ballot box was allotted to respondent No. 25, and that no illegality or material irregularity affecting the result of election was committed as alleged by the petitioner.

The respondent No. 1 also denied that the ballot boxes were not constructed in accordance with the rules and that these could be tampered with. It was also pleaded that rule 46(vi) was amended and that proper procedure was followed in the opening of ballot boxes. It was also controverted by the respondent that any corrupt or illegal practice had been committed by him or his agents or other persons with his sanction and connivance or with the sanction or connivance of his agents. All the allegations of the corrupt practices mentioned in para. No. 5 of the petition were categorically denied by respondent No. 1 in his written-statement.

On 6th December 1952, the learned counsel for respondent No. 1 made a statement that he pressed only paragraphs 4, 6 and 7 of the preliminary objections in the written statement filed by his client.

The following preliminary issues were framed:—

1. Is the petition defective for the reasons given in para. No. 4 of the preliminary objections of the written-statement? If so, what is its effect?

2. Are the paras. and schedules mentioned in para. No. 6 of the preliminary objections of the written-statement vague, indefinite and lacking in particulars as required by Section 83 clause (2) of the Representation of the People Act and the rules made thereunder? If so, what is its effect?

3. Whether sub-para. (d) of para. 3 of the petition should be struck off on the ground that rule 46(vi) has been amended?

Our order dated 10th January 1953 on the preliminary issues may be read as a part of this judgment.

The following issues were framed on merits:—

1. Whether the election of respondent No. 1 is void for the reasons mentioned in para. No. 3 clauses (a) to (c) of the petition?

2. Whether the election of respondent No. 1 is void for the reasons given in para. No. 5, clauses (a) to (f) of the petition?

3. To what relief, if any, is the petitioner entitled?

*Issue No. 1.*—It has to be considered whether the election of respondent No. 1 is void for the reasons mentioned in para. No. 3 clauses (a), (b) and (c) of the petition.

In para. No. 3(c) it was alleged that the ballot boxes provided at the polling stations of Tarn Taran Constituency during the period from 7th January 1952 to 21st January 1952 were not constructed in the manner and method provided under rule 21 of the Representation of the People (Conduct of Election Petitions) Rules, 1951 which materially affected the result of election. No evidence was adduced by the petitioner on this point and no arguments were addressed in respect of it. In fact this part of the issue was not pressed. We accordingly find it against the petitioner.

The allegations in para. 3(a) and (b) are as follows:—

“That the election of respondent No. 1 is void, as the result of the election has been materially affected by the non-compliance with the provisions of the law laid down in the Representation of the People Act, 1951, and the rules made thereunder and also by mistake in the use of prescribed forms in so far as:—

(a) that the mandatory provisions of Rule 19(3)(b) have not been complied with. The petitioner Mohan Singh is son of Jagat Singh of village Tur, Police Station Sarhali, District Amritsar, S. Mohan Singh son of S. Indar Singh of Cooper Road, Amritsar, was another duly nominated candidate who subsequently withdrew his candidature. This Mohan Singh son of S. Indar Singh could in no case be validly nominated candidate and his name could not be included either in the list of validly nominated candidates or in the notice under Rule 19(3)(b). The name of the petitioner was never entered, published or displayed in such notice. Non-compliance with this rule resulted in

an over-all belief among the voters during the polling days between 7th and 21st January, 1952 that the petitioner was not a validly nominated candidate.

- (b) That the ballot boxes provided at each polling station did not contain and include any ballot box in the name of the petitioner. On the other hand there were ballot boxes in the name of Mohan Singh son of S. Indar Singh who had withdrawn his candidature on 12th November 1951. It was found that the symbol of bow and arrow had also been allotted to S. Mohan Singh of Cooper Road and that the list pasted in this Constituency contained the name of this Mohan Singh son of Indar Singh."

Before considering the evidence of the parties on this issue we would like to quote the relevant law on this point. Section 38 of the Representation of the People Act, 1951, lays down that the Returning Officer shall, immediately after the expiry of the period within which candidatures may be withdrawn under Sub Section (1) of Section 37, prepare and publish a list of valid nominations in such manner as may be prescribed.

Under rule 10 of the Representation of the People Rules, 1951, the Returning Officer, shall, before preparing a list of valid nominations under Section 38, assign a different symbol to each candidate. The list of valid nominations shall be prepared in such language or languages as the Election Commission may direct and shall contain the names in alphabetical order and addresses of the validly nominated candidates. The list shall indicate the symbol assigned to each candidate. Every such list shall be prepared in form 5 and the Returning Officer shall immediately after its preparation cause a copy of the list so prepared to be affixed in some conspicuous place in his office. Under rule 11, the Returning Officer shall publish in the Official Gazette and in such other manner as the Election Commission may direct, the list of validly nominated candidates.

Rule 19(2) lays down that the symbol assigned to each candidate shall be printed on labels which shall be pasted both inside and outside a ballot box and such ballot box shall then be deemed to have been allotted to that candidate.

Rule 19(3)(b) provides that another notice giving the name of each candidate in the same language or languages and in the same order in which the names of such candidates appear in the list of validly nominated candidates at the election published under rule 11 together with the description of the symbol which has been assigned to each candidate under sub-rule (1) of rule 10, shall be displayed prominently outside and inside each polling station.

The petitioner has placed himself into the witness-box as P.W. 32 and relies upon the statements of P.W. 1 S. Gurdoyal Singh, P.W. 2 S. Mohan Singh, P.W. 3 S. Kuldip Singh, P.W. 4 Doctor Gur Baksh Singh, P.W. 5 S. Nand Singh, P.W. 6 Harbhajan Singh, P.W. 7 Ranjit Singh, P.W. 8 Fauja Singh, P.W. 9 Sardara Singh, P.W. 10 Banta Singh, P.W. 11 Sewa Singh, P.W. 12 Lachman Singh, P.W. 13 Chanan Singh, P.W. 14 Kehr Singh, P.W. 16 Niranjan Singh, P.W. 17 Pritam Singh, P.W. 18 Puran Singh, P.W. 19 Bara Singh, P.W. 20 Gurdit Singh, P.W. 21 Jhilman Singh, P.W. 22 Mohinder Singh, P.W. 23 Sucha Singh, P.W. 24 Ranjit Singh, P.W. 25 Prem Singh, P.W. 27 Puran Singh and P.W. 28 Kundan Singh on this issue. In rebuttal the respondent No. 1 appeared as R.W. 11 and produced R.Ws. 1 to 10.

The list (exhibit P.W. 1/3) prepared in Form No. 5 clearly gives the names of all the validly nominated candidates including the petitioner who is shown at serial No. 14 as the resident of village Tur, Zail Usma, Police Station Sirhali, Tehsil Tarn Taran. The symbol assigned to him is shown as bow and arrow. The name of respondent No. 25 (S. Mohan Singh of Cooper Road) does not appear in that list, as he had withdrawn his candidature on 12th November, 1951. The final list of validly nominated candidates was correctly prepared and published according to rules. The Gazette notification No. 8747—Elections, dated 13th December 1951 exhibit D.3 clearly bears it out. In that notification also full and correct particulars were given about the petitioner and the name of respondent No. 25 did not appear therein. This list was also correctly published in news papers and wide publicity was given to it, vide the press cutting exhibit P.W. 3/1 (of the Tribune). This is further clear from the statement of P.W. 3 S. Kuldip Singh Virk, the Returning Officer of this constituency, who avers that the list was prominently displayed at the prescribed places. Thus from the evidence relied upon by the petitioner himself there is no manner of doubt that it was widely known everywhere (including the whole electorate of this constituency) that the petitioner S. Mohan Singh, resident of village Tur was a validly nominated candidate. It was further made widely known to the voters that S. Mohan Singh (of Cooper Road) was no longer a candidate. This list also gave wide publicity

to the fact that the petitioner had been assigned the symbol of bow and arrow. The nomination paper (exhibit P.W. 1/4) of S. Mohan Singh (respondent No. 25) makes it abundantly clear that no symbol was assigned to him, as he withdrew his candidature. Rule 19(3)(b) was complied with so far as the notice (exhibit P.W. 1/1) in English language is concerned. The notice gave the name of each candidate (including the petitioner) in the same language and in the same order in which the names of such candidates appeared in the list together with the description of the symbol which was assigned to each such candidate. The petitioner's name appeared at serial No. 14 (as shown in the list) and the symbol assigned to him was shown as bow and arrow (as in the list). The only mistake committed was that the notice (in Urdu) was not in accordance with the notice in English. In the Urdu notice (exhibit P.W. 1/2) Mohan Singh son of Indar Singh was wrongly shown as a candidate and the symbol assigned to him was shown as bow and arrow. The petitioner's allegation in para. No. 3(a) of the petition is correct *only* to this extent.

We have now to consider whether the petitioner's allegations in para. No. 3(b) of the petition about the ballot boxes are correct. The evidence led by the petitioner to prove that there were no ballot boxes in his name and that instead there were boxes in the name of respondent No. 25, is entirely unworthy of credence. This contention of the petitioner is belied by his own evidence oral as well as documentary. We have shown above that the petitioner was mentioned as one of the validly nominated candidates in the list (in Form 5), in the notice (in English) exhibit P.W. 1/1, in the Gazette notification (exhibit D.3), and in the newspapers. It was also clearly shown in these documents that the petitioner had been assigned the symbol of bow and arrow. The name of respondent No. 25 was not shown in the said documents and no symbol was shown to have been allotted to him. From the statement of the Returning Officer (Shri Kuldip Singh) it is clear that there were ballot boxes on all the polling stations bearing the symbol of bow and arrow which had been assigned to the petitioner. Moreover, as the symbol assigned to the petitioner had been pasted both inside and outside the ballot boxes, in the circumstances according to Rule 19(2) these ballot boxes *shall be deemed to have allotted* to the petitioner. That there were ballot boxes of the petitioner is also clearly proved from the statements of some of the P.Ws. themselves. P.W. 3 Shri Kuldip Singh, Returning Officer avers, "The petitioner met me on some occasions when I used to go to inspect the polling booths during the election days. The petitioner never complained to me that no ballot boxes had been provided in his name.... The petitioner was present at the time of counting of votes. As the petitioner wanted to place his own seal also on the lock of the room in which the ballot boxes had been placed for counting, I permitted him to do so. This is quite incorrect that there were no ballot boxes in the name of the petitioner and that there ballot boxes in the name of S. Mohan Singh, resident of Cooper Road, Amritsar." P.W. 4 Doctor Gurbux Singh also admits that there were ballot boxes bearing the symbol of bow and arrow. The petitioner was an Akali candidate and the Akali Party made strenuous efforts to win the election. S. Kehr Singh (P.W. 14) was Propaganda Secretary of the Akali Dal who worked vigorously for the petitioner during the elections. He states as follows:—

"We used to tell the voters that the symbol of the petitioner as a party candidate was bow and arrow.... It was on the last polling day that I came to know that the petitioner's ballot box had not been provided for.... 'Parbaht', 'Ajit' and 'Akali Patrika' are the newspapers which were supporting the cause of the candidate of the Akali Dal. No news ever appeared in the newspaper about the absence of the ballot box of the petitioner in this Constituency."

P.W. 16 Niranjan Singh also admits that the petitioner had told him that his symbol was that of bow and arrow. He further states that there was a ballot box bearing that symbol.

P.W. 29 Dasondha Singh deposes as follows:—

"I was told by the persons outside the Polling Station who issue identity slips that I should cast my vote in the ballot box bearing the symbol of bow and arrow."

Even the petitioner's own statement (as P.W. 32) completely shows the falsity of his allegation in the petition in this respect. The relevant portions of his statement are given below:—

"I was allotted a symbol in the election. The symbol was that of bow and arrow. It is true that the voting was by symbols. Before the election started I had told my voters that the symbol which was

allotted to me was that of bow and arrow.... In all the posters it was mentioned that my symbol was bow and arrow.... I cast my own vote on 10th January, 1952. I am not prepared to say in what ballot box I cast my vote."

The evidence mentioned above adduced by the petitioner hardly needs any comment and amply shows that the contention of the petitioner that he had no ballot boxes, is wholly baseless. If there was no ballot box in his name as alleged by the petitioner, what was the necessity for him to put his seal on the lock of the room in which the ballot boxes were placed for counting? Again, how could the petitioner secure more than seventeen thousand votes, if there were no ballot boxes for him? All these facts and circumstances lead to the irresistible conclusion that there were ballot boxes provided for the petitioner on all the polling stations which bore his symbol of bow and arrow. The petitioner was not an independent candidate and was fighting the election on Akali ticket. Had there been no ballot boxes provided for the petitioner, there would have been strong agitation both in the press and on the platform on behalf of the petitioner in this connection. The absence of such a propaganda disproves the allegation of the petitioner put forth in para. 3(b) of the petition. For the reasons given above we decide this part of the issue against the petitioner. Our conclusion in respect of the allegations given in para. 3(a) of the petition is that the provisions of law were duly complied with except in respect of the notice in Urdu (exhibit P.W. 1/2). We have now to determine whether this small mistake or irregularity materially affected the election. After carefully considering the entire evidence record our reply is in the negative.

The petitioner has led evidence to show that some of his voters returned to their houses without casting their votes on coming to know that his (petitioner's) name was not mentioned in the list or notice (exhibit P.W. 1/2) and that there were not ballot boxes provided for him. It is also in the statements of some of the P.Ws. that they had gone to the polling station to cast their vote for the petitioner; but on not finding his ballot box they voted for the Communist candidate. The petitioner's own statement on this point is entirely unworthy of reliance. He states:—

"The polling started in the constituency on 7th January, 1952. Naurangabad was one of the polling stations where the voting started on the first day. In the evening I was informed by my agents that the ballot boxes at the polling stations were in the name of S. Mohan Singh son of S. Indar Singh (respondent No. 25) and none in my name. I was further told by my supporters that this caused great confusion in the minds of my voters. Notices under rule 19(3) of the electoral rules did not contain my name as a candidate for the election..... On seeing this state of affairs my workers and I felt extremely disappointed and feeling of frustration pervaded in our ranks. A large number of voters who had promised to support my candidature felt obliged to vote as they pleased on seeing that I was not a candidate in the field."

The following facts and circumstances go against the petitioner and show that the version put by him has no force:—

(1) In cross-examination the petitioner clearly states that if his name had been mentioned in the list of candidates as it should have been and if the ballot boxes in his name had been properly provided for, there was no conceivable reason for his defeat in this election. It has already been discussed and shown above that the petitioner's name was correctly given in the list of validly nominated candidates and that ballot boxes had been properly provided for him. Thus both the conditions desired by the petitioner had been fulfilled and therefore, there was no cause of grievance to him.

(2) The petitioner's own conduct during the elections goes to show that either he or his men did not notice the contents of the notice (in Urdu) or if they noticed the same no significance was attached to the said notice.

(3) No complaint was made by the petitioner or his agents or his voters or any one else on behalf of the petitioner about the mistake in the Urdu notice—exhibit P.W. 1/2) to the Returning Officer or other higher authorities. The petitioner's own statement in this connection is as follows:—

"I did not submit any written complaint about the omission of my name in the notices under Rule 19(3) of the Electoral rules and also for the failure of the authorities to provide the ballot boxes in my name. I did not move even the Akali Dal about these irregularities. I did not consider it necessary to advertise these irregularities in the press."

The fact that the petitioner kept quiet even on coming to know about the alleged irregularities, leads to the conclusion that he did not attach any importance to the mistake in the notice (in Urdu exhibit P.W. 1/2.) It seems a mountain was made of this insignificant mistake after the result of the election was declared against the petitioner.

4 The petitioner seriously contested the election till the polling was over and his version that he had lost all hopes of success on the first day of polling is quite unworthy of credence. The polling started on 7th January 1952 and closed on 21st January 1952 in this constituency. The petitioner appointed 90 polling agents after the polling of first day was over and secured many more votes on several polling stations than the respondent No. 1 e.g., on the polling station at Mahmud Khan he got 617 votes, while the respondent No. 1 secured only 16 votes. At the Wain Poin and Dalawarpur polling stations also the petitioner obtained a large number of votes than respondent No. 1. These results amply bear out that the petitioner's contention that he lost all hopes of success on the first day of polling, is without substance. P.W. 2 S. Mohan Singh (respondent No. 25) also deposes that the petitioner was working seriously in his election campaign.

5. The posters exhibits D.4, D.5, D.6, D.7, D.8, D.9, D.10, and D.11 issued on behalf of the petitioner urged the voters to cast their votes in his favour. After several days of the polling the poster exhibit D.7 appeared in support of the petitioner the English translation of which is as follows:—

"Glorious victory of the Panthic candidate".

"The Panthic candidate S. Mohan Singh Ji Tur defeated his rival candidates. He secured 95 per cent. of the votes polled of all the villages. Most of the rival candidates will forfeit their securities."

The 'Parbhat' 'Ajit' and 'Akali Patrika' newspapers were carrying on strenuous propaganda in support of the petitioner during the polling days till the election was over.

6. The petitioner appointed counting agent and himself put his seal on the lock of the room in which the ballot boxes were placed. There was no fun in appointing a counting agent or putting the seal, if no vote was polled for the petitioner as alleged by him.

7. The petitioner himself admits that the result of the election was affected only so far as most of the literate people were concerned and that it did not make any difference so far as illiterate people were concerned, as the latter cast their votes after seeing the symbol only. S. Kehr Singh P.W. admits that majority of the voters were illiterate in this constituency. The last census report shows that about 95 per cent. of the voters were illiterate.

After giving our best and anxious consideration to the evidence on record we find that the petitioner has failed to prove his allegations contained in para. No. 3(a) and (b) of the petition except to the extent that there was mistake in the notice (in Urdu) exhibit P.W. 1/2. This irregularity, however, did not materially affect the election.

Issue No. 2.—It now remains to be considered whether the election of respondent No. 1 is void for the reasons given in para. No. 5 clauses (a) to (f) of the petition.

(a) It is alleged that respondent No. 1 and his agents and other persons with the connivance of respondent No. 1 and his agents committed the corrupt practice of bribery by paying Rs. 500 as gratification to S. Sardara Singh and also by promising and recommending a Congress ticket for the Upper House of the Punjab Legislature to him as a reward for having withdrawn his candidature in favour of respondent No. 1. The petitioner appears to have no personal knowledge about these allegations and relies upon the statement of P.W. 15 Harjit Singh only. Harjit Singh was a polling agent of the petitioner and as such is an interested person. Moreover, he also does not say that Rs. 500 were paid in his presence. The respondent No. 1 denies these allegations on solemn affirmation. The alleged corrupt practices have not been proved.

(b) In this clause of para. No. 5 the petitioner alleges that the respondent No. 1 and his agents paid various sums of money and offered liquor to the voters. There is, however, no evidence on this point and the learned counsel for the petitioner did not press this part of the issue.

(c) It is alleged that undue influence was put on Ajit Singh son of Puran Singh of Khadur Sahib by respondent No. 1 and that he was made to withdraw from



the contest. This corrupt practice is mentioned in Schedule C(i); but there is no evidence on this point and the plea was not pressed in the course of arguments.

In Schedule C (2) it is alleged that the respondent No. 1 and his agents Master Basant Singh and Master Chattar Singh, Dafedar Indar Singh, Babu Tara Singh and Jathedar Ishar Singh of Chohla Sahib threatened social ostracism to voters of backward classes and exercised undue influence. These allegations are denied by the respondent No. 1 and the petitioner does not say that he has personal knowledge about the same. There is hardly any evidence worthy of reliance in respect of this allegation and the petitioner has miserably failed to prove it.

In Schedule C(3) it is alleged that Tarlok Singh and Sher Singh sons of Sawan Singh Jat of village Pheloke worked for and canvassed votes for respondent No. 1. Both of them threatened the Mazhbis of the said village with dire consequences, if they refused to vote for respondent No. 1. Karmon Sansi of the said village was given serious injuries by the said Tarlok Singh (which ultimately resulted in his death) when he refused to vote for the said respondent. Tarlok Singh was arrested and sentenced to three years' R.I. by Diwan Dilbagh Rai Magistrate on 27th March 1952. The petitioner produced P.W. 28 Tarlok Singh and P.W. 31 Sher Singh in support of these allegations. The respondent No. 1 in his statement on solemn affirmation states that these persons were his opponents in the election. Tarlok Singh deposes that he and his brother helped respondent No. 1 in his election, that he asked Karmon Sansi to vote for the said respondent, that on his refusal to do so he asked his companion Tara to assault him, that Tara gave a Takwa blow to Karmon as a result of which he died, and that he was sentenced to three years' rigorous imprisonment as alleged above. This witness is a man of no substance and his testimony is quite unworthy of credence. In his statement before the Magistrate (copy exhibit D. 2) he gave quite a different version. He admits before us that the D.Ws. who appeared for him in defence told the truth. They had stated that Karmon received injuries in a gambling affray and not in the manner alleged above. It is in his own statement that he has no connection with the respondent No. 1 and that he does not even know for what principles the Congress stands. Thus there was no motive for him to help the respondent No. 1. His brothers Kehr Singh and Sher Singh are married in village Tur and it appears that he is interested in the petitioner. Moreover, there is no finding by Shri Dilbagh Rai that Karmon was assaulted by Tarlok Singh, as the former refused to vote for respondent No. 1. P.W. 31 Sher Singh states that he was a Congress worker during the last general elections and that he voted for respondent No. 1. He appeared as a defence witness for his brother Tarlok Singh and made a statement contradicting the allegation mentioned in Schedule C. According to him Karmon died as a result of injuries which he received in a gambling affray. Thus, this witness contradicts the statement of his brother Tarlok Singh. The witness deposes that he canvassed 5 or 10 voters, but he cannot give the names of these persons. He does not even know for what ideals the Congress stands and it appears that he was not a Congress worker and that he did not support the respondent No. 1. The petitioner has failed to establish the allegations given in this part of Schedule C.

In Schedule C(4) the petitioner alleges that the respondent No. 1 who was the head Priest of Shri Akal Takht, Amritsar, abused the sacred name of this religious office and exploited the religious sentiments of the ignorant village folk. It is further alleged that the respondent and his agents S. Udham Singh Nagoke, S. Ishar Singh Majhail, and S. Harbhajan Singh asked voters to vote for the respondent as being the spiritual head of the Sikh community.

The petitioner has not made a specific statement in respect of these allegations and appears to have no personal knowledge about the same. There is no independent and cogent evidence on this point on behalf of the petitioner. He relies upon the statements of P.W. 14 S. Kehr Singh and P.W. 30 S. Chanda Singh. The former was a paid employee of the Akali party and as such is an interested person. The latter also was admittedly a worker of the petitioner and as such cannot be said to be an impartial person. After carefully considering the evidence adduced by the petitioner on this point we find without hesitation that we were not at all impressed with the version given by the aforesaid witnesses. The respondent No. 1 in his statement as R.W. 11 denies that he along with Jathedar Udham Singh Nagoke, S. Ishar Singh Majhail, and Professor Harbhajan Singh ever held any meeting in connection with his election campaign on Amavas days at village Chohla Sahib or at Tarn Taran. He further avers that no one ever exhorted the voters to cast their votes in his favour because of his position as a Jathedar of the Akal Takht, and that during the election days Gyani Partap Singh was acting in his place as Jathedar of the Akal Takht. He has produced certified copy of the order of S.G.P.C. (exhibit D.17) which supports his version.

The petitioner has not been able to prove the allegations mentioned in this part of the Schedule C

(d) It is alleged that on the 9th January, 1952, at Dalawapur polling station one Sohan Singh son of Saiwan Singh Jat of village Phcloke was promised illegal gratification of ten rupees and was induced by Master Basant Singh teacher, Khalsa High School Sarhali, S Karam Singh lambardar of village Thatha, S Amar Singh Jat of village Mohanpura and S Bhagwan Singh Zamindar of village Bhattal Bhaik, who were all agents of respondent No 1, to vote for the said respondent and that the said Sohan Singh removed the ballot paper from the polling station with the object of handing it over to respondent No 1's agents, but he was arrested and convicted

The petitioner seeks to prove this allegation from the statement of Dasondha Singh (PW 29) who is the first cousin of the deceased Sohan Singh. This witness is clearly an interested person and there is no corroborative evidence to support him. The respondent No 1 denies these allegations and avers that S Bhagwan Singh and S Amar Singh never acted as his agents and that he never asked S Karam Singh to work for him. The petitioner has miserably failed to establish the aforesaid allegation.

(e) There is no evidence in support of the allegation that the respondent No 1 and his agents used National flag and the learned counsel for the petitioner did not press this plea.

(f) It is alleged that S Karam Singh lambardar of village Thatha, Jathedar Ishar Singh Member Panchayat Committee Chohla Sahib, and S Kartar Singh member Panchayat Pakhopura canvassed votes for respondent No 1. The respondent No 1 denies these allegations in his statement on solemn affirmation. He avers that none of these persons rendered any help to him and that he did not get the son of S Karam Singh of Thatha employed as a Sub Inspector Police.

The petitioner relies on the statement of PW 30 S Chanda Singh on this point. He was a worker of the petitioner and is not a disinterested person. His statement is quite unconvincing and there is no sufficient and satisfactory evidence on behalf of the petitioner to support this allegation. We find that the petitioner has failed to establish this allegation also.

For the reasons given above we find issue No 2 against the petitioner. He has not been able to prove any of the allegations relating to the corrupt practice mentioned in para No 5 clauses (a) to (f) of the petition and the relevant Schedules.

**Issue No. 3**—Vide our findings above the petition fails and is consequently dismissed. Having regard to all the facts and circumstances of the case the parties are left to bear their own costs.

Announced

The 30th June, 1953

(Sd) SHAMSHER BAHADUR Chairman

I agree

The 30th June, 1953

(Sd) CHHAJU RAM, Member

I agree

The 30th June, 1953

(Sd) MOHINDRA SINGH PANNUN, Member

BEFORE THE ELECTION TRIBUNAL, JULLUNDUR

ELECTION PETITION No 183 of 1952

S Mohan Singh—Petitioner

Versus

Jathedar Mohan Singh and others—Respondents

ORDER

(PER CHHAJU RAM, Member, Election Tribunal)

S Mohan Singh petitioner has brought this election petition against Jathedar Mohan Singh and others alleging that the petitioner was a candidate at the election of the Punjab Legislative Assembly from Tarn Taran Constituency held in the year 1952, that the respondent No 1 was returned from the Constituency, that the remaining respondents were also candidates who were duly nominated at the election, that the election of respondent No 1 is void for the reasons given in para No 3 of the petition, that the persons whose full particulars are given in Schedule No 1 acted as agents of respondent No 1 who committed various corrupt and

illegal practices on behalf of the said respondent, that the election of the said respondent is also void on account of the reasons given in para. No. 5 of the petition and that the respondent No. 1 was guilty of the corrupt and illegal practices mentioned in para. No. 5 of the petition, clauses (a) to (f).

The respondent No. 1 raised several preliminary objections in the written statement. It was pleaded that the election petition was not properly presented, that it was bad for non-joinder of parties and had not been verified in accordance with the provisions of Section 83 of the Representation of the People Act 1951, that the Tarn Taran Assembly Constituency in respect of which the petition had been brought was a double member Constituency from which the respondent No. 1 and respondent No. 10 were declared duly elected, that the grounds in para. No. 3 of the petition for declaring the election of respondent No. 1 void were such as would make the election of both the candidates void and since the petitioner had not claimed the election of both the candidates to be void, the petition was defective, that para. No. 3 and Schedule No. 1 and sub-paras. (a) to (f) of para.

5, and the Schedules (a) to (f) of the petition were vague, indefinite and lacking in particulars as required by Section 83 clause (2) of Representation of People Act of 1951, and hence these paras. sub paras. and Schedules should be deleted. It was also pleaded that sub-para. (d) of para. No. 3 of the petition be struck off, as rule No. 46(6) had been amended. The learned counsel for respondent No. 1 made a statement on 6th December, 1952 that he only pressed paragraphs 4, 6 and 7 of the preliminary objections in the written statement. The following preliminary issues were framed:—

1. Is the petition defective for the reasons given in para. No. 4 of the preliminary objections of the written statement, if so, what is its effect?

2. Are the Paras. and Schedules mentioned in para No. 6 of the preliminary objections of the written statement vague, indefinite and lacking in particulars as required by Section 83 clause (2) of the Representation of People Act and the rules made thereunder? If so, what is its effect?

3. Whether sub-para. (d) of para. 3 of the petition should be struck off on the ground that rule 46(vi) has been amended?

*Preliminary issue No. 1.*—The learned counsel for respondent No. 1 contended that the grounds taken up in para. No. 3 of the petition for declaring the election of respondent No. 1 void were such as would make the election of both the candidates void, and as the petitioner had not claimed the election of both the candidates to be void, the petition was defective. The learned counsel for the petitioner urged that he was entitled to take any grounds for declaring the election void and he could split up the reliefs. After hearing the learned counsel for the parties we are of opinion that in case the allegations in para. No. 3 of the petition are established, it would be for us to consider as to what relief, if any, the petitioner would be entitled to, and at this stage it would not be proper for us to go further. In the circumstances we make an order accordingly.

*Preliminary issue No. 1.*—The learned counsel for the respondent urged that the allegations of para. No. 5 of the petition and the Schedules (a) to (f) were vague, indefinite and lacking in particulars as required by Section 83 clause (2) of the Representation of People Act 1951 and as such be ordered to be deleted. We have carefully gone through the allegations in the petition contained in para. No. 5 and the Schedule mentioned above and are of opinion that this para. and the Schedules (a) to (f) are not so vague or indefinite as to entail the rejection of these allegations. We shall be careful not to allow the petitioner to go beyond

these allegations contained in para. No. 5 of the petition and the schedules stated above, and the petitioner will have to confine himself to the allegations in the said para. and the Schedule at the time when the evidence on his behalf will be recorded.

*Preliminary issue No. 3.*—The counsel for the parties agree that rule No. 46(6) has been amended and as such this preliminary issue does not arise. Accordingly this preliminary issue will be taken as struck off.

Announced.

(Sd.) SHAMSHER BHADUR, *Chairman.*

(Sd.) CHHAJU RAM, *Member*

(Sd.) M. S. PANNUN, *Member.*

*The 10th January, 1953.*

---

[No. 19/183/52-Elec.III/12077.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.